TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [redacted] 1911

No. [redacted] 45

TANG TUN AND LEUNG KUM WUI, PETITIONERS,

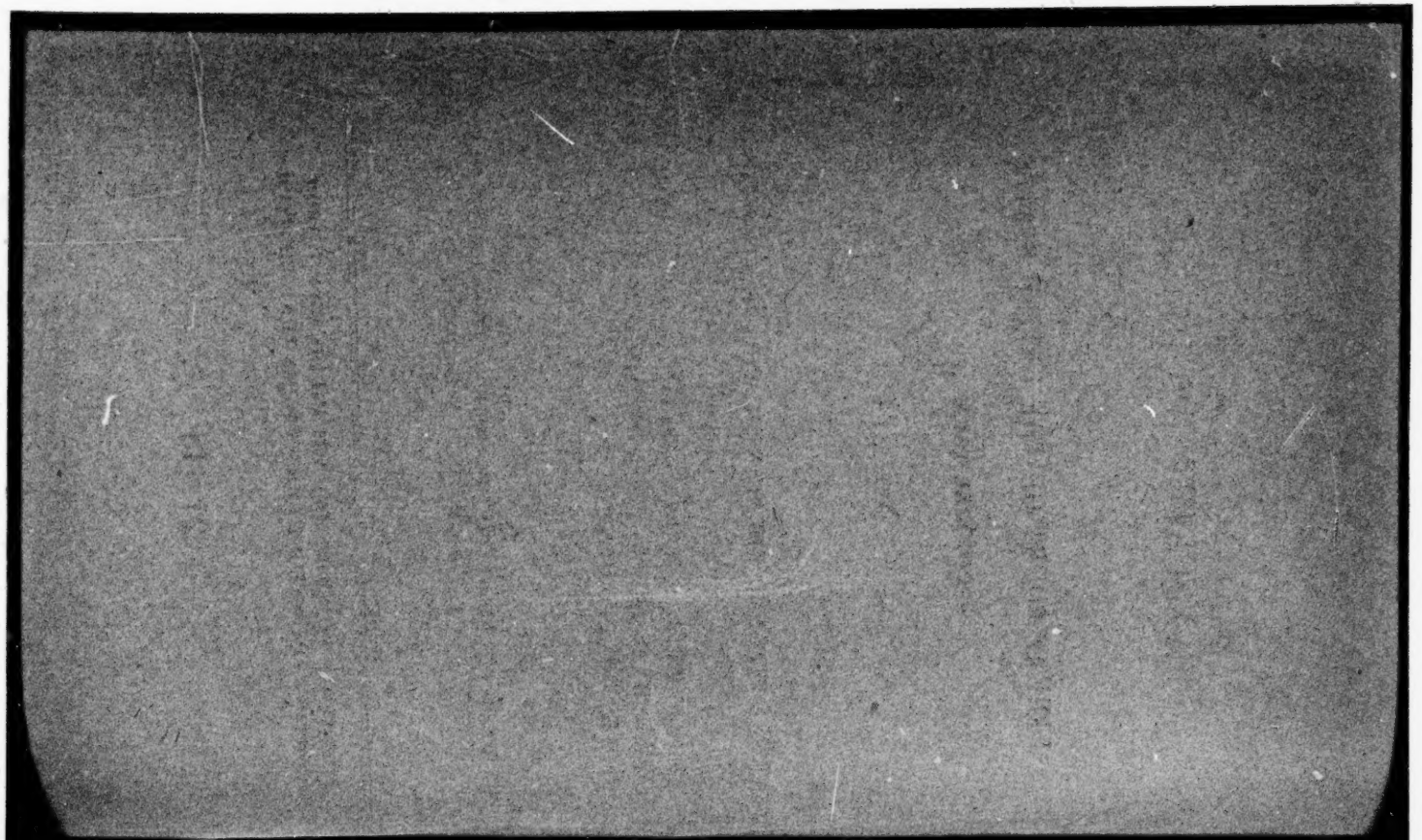
vs.

HARRY EDSELL, CHINESE INSPECTOR IN CHARGE AT THE PORT OF SUMAS, WASHINGTON, FOR THE UNITED STATES GOVERNMENT.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

PETITION FOR CERTIORARI FILED MAY 1, 1909.
CERTIORARI AND RETURN FILED JUNE 28, 1909.

(21,648.)



(21,648.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1910.

No. 214.

TANG TUN AND LEUNG KUM WUI, PETITIONERS,

vs.

HARRY EDSELL, CHINESE INSPECTOR IN CHARGE AT THE PORT OF SUMAS, WASHINGTON, FOR THE UNITED STATES GOVERNMENT.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

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a United States Circuit Court of Appeals for the Ninth Circuit.

No. 1633.

HARRY EDSELL, Chinese Inspector in Charge at the Port of Sumas, Washington, for the United States Government, Appellant,

vs.

TANG TUN and LEUNG KUM WUI, Appellees.

In the Matter of the Application of TANG TUN and LEUNG KUM WUI for a Writ of Habeas Corpus.

Transcript of Record upon Appeal from the United States District Court for the Western District of Washington, Northern Division.

1 [*Order Extending Time to Prepare, etc., Record.*]

In the District Court of the United States for the Western District of Washington, Northern Division.

No. 3326.

In the Matter of the Application of TANG TUN and LEUNG KUM WUI for a Writ of Habeas Corpus.

Now, on this 16th day of July, 1908, upon application of the United States Attorney, and for sufficient cause appearing, it is ordered that the time within which the Clerk of this court shall prepare and certify and transmit the record upon appeal in this cause, to the Circuit Court of Appeals for the Ninth Judicial Circuit, be, and the same is hereby extended to and including the 18th day of August, 1908.

C. H. HANFORD, *Judge.*

[Endorsed:] [C. C. A. No. 1633.] No. 3326. In the District Court of the United States for the Western District of Washington. In the Matter of the Application of Tang Tun and Leung Kum Wui for a writ of Habeas Corpus. No. 1633. United States Circuit Court of Appeals for the Ninth Circuit. Order Extending Time Within Which to File Transcript. Filed Aug. 14, 1908. F. D. Monckton, Clerk. Re-filed Aug. 15, 1908. F. D. Monckton, Clerk.

2 In the District Court of the United States for the Western District of Washington, Northern Division.

No. 3326.

In the Matter of the Application of TANG TUN and LEUNG KUM WUI for a Writ of Habeas Corpus.

[*Names and Addresses of*] *Counsel.*

Elmer Ely Todd, U. S. District Attorney, Lowman Bldg., Seattle, W'n.
Charles T. Hutson, Ass't U. S. District Attorney—same.
Frederick G. Dorety, Ass't U. S. District Attorney—same—Appellant.
John C. Whitlock, 637 New York Block, Seattle, Washington.
James A. Kerr, 318 Mutual Life Bldg., Seattle, Washington.
E. S. McCord, 318 Mutual Life Bldg., Seattle, Washington.
James J. McCafferty, 902 Lowman Bldg., Seattle, Washington.
James J. Godfrey, 902 Lowman Bldg., Seattle, Washington,
Attorneys for Tang Tun and Leung Kum Wui, Appellees.

3 In the United States District Court for the Western District of Washington, Northern Division.

No. 3326.

In the Matter of the Application of TANG TUN and LEUNG KUM WUI for a Writ of Habeas Corpus.

Petition [*for Writ of Habeas Corpus.*]

To the Honorable Cornelius H. Hanford, District Judge:

Comes now Woo Gen, petitioner, and petitions this Court to issue a writ of habeas corpus to inquire into the cause of the detention of one Tang Tun and Leung Kum Wui, his wife, by Harry Edsell, Chinese Inspector in Charge at Sumas, Washington, and shows to the Court as follows:

I.

That yourt petit-oner, Tang Tun, was born in the city of Seattle, Territory (now State) of Washington, in the year 1879, of Chinese parents, who then resided, and were permanently domiciled in said city. That thereafter, in the year 1884, together with his parents, he departed for the Empire of China, and remained there for a period of 13 years. That in the year 1897 he returned to the United States, and after an examination was admitted at the port of Port Townsend, Washington, by J. C. Saunders, then Collector of Customs; after being so admitted he entered the employ of the mercan-

tile firm of Wa Chong & Co. of the city of Seattle, and re-
4 mained in the employ of said company as a clerk and general assistant until the year 1903, when he acquired an interest in said firm, which he has ever since retained and now owns.

That thereafter, in September, 1905, he again returned to China for the purpose of getting married, and during said visit to China he was in fact married in accordance with the laws of China, and the consular requirements of the United States, to one Leung Kum Wui, his co-applicant herein. That on the 22d day of June, 1906, he again returned to the United States and sought an entry at the port of Sumas, State of Washington, but his application for admission and for the admission of his wife was denied by the Inspector in Charge, a copy of the order of rejection being attached hereto, marked Exhibit "A," and by this reference made a part of this paragraph.

II.

That thereafter an appeal was prosecuted from said order of rejection to the Secretary of Commerce and Labor at Washington, D. C., and such proceedings were had that said order appealed from was in all things affirmed. Your applicants are now being held by the said Inspector Harry Edsell, Chinese Inspector in Charge at Sumas, for deportation to the Empire of China.

III.

That the examination of the witnesses designated by your peti-
tioner as persons able to identify him as a native-born citizen
5 of the United States was conducted by said Inspector in Charge, during his absence, so as to prevent said witnesses from completely and accurately identifying your petitioner as the person who had been born and acquired a permanent residence in the United States, and was further conducted by said Inspector in such a manner as to prevent said witnesses from testifying as to the facts within their own knowledge, and said Inspector failed and neglected to take in the proper manner, or at all, the testimony of the witnesses so designated by your petitioner.

IV.

That said Inspector in Charge, in arriving at the conclusions expressed in said order rejecting the applicant for admission of your petitioners, used and gave credence to, and place- reliance upon testimony of witnesses, who were not sworn before giving testimony.

V.

That said Inspector in Charge, in order to reach the conclusion that pour petitioners were not entitled to entry had reco-rse to and made use of secret document, papers, and files which were not made a part of the record when submitted to the applicants for their examination, or to their counsel, and which were not, and could not be made a part of the record sent up on appeal to the Secretary of Com-

merce and Labor, but after being used by said Inspector as aforesaid were secreted by him so as to prevent the fact of their illegal use being brought to the attention of the Secretary of Commerce and Labor on appeal.

6 VI.

That in conducting the inquiry into the status of these applicants, said Inspector abused the discretion reposed in him by the laws of Congress and the Regulations of the Department of Commerce and Labor, in that he refused to take in proper or legal manner, or at all, testimony of witnesses designated by these applicants, and in secretely making use of papers and document outside the record, and disconnected therewith, and which were fictitious and false, and known to be such by said Inspector at the time he had recourse to them.

VII.

That for the purpose of influencing and prejudicing the mind of the Secretary of Commerce and Labor, and securing an affirmance of the order of rejection, said Inspector in Charge Edsell, after the transmission of the record on appeal privately communicated with him the substance of the unsworn testimony used by him as aforesaid, and the documents, papers, and records hereinabove referred to, and by reason of such communication, the said Secretary affirmed the order rejecting the application of said Tang Tun and Leung Kum Wui for admission, and thereby abused the discretion and authority vested in him by law, and the regulations of his Department.

VIII.

That there are a number of well-known and reputable people in the city of Seattle, who are well acquainted with the ap-
7 plicant, Tang Tun, and with the fact that he is a native-born citizen of the United States, and who, if they had been given an opportunity, would so testify, and on a further, fair, and impartial hearing by the Inspector in Charge would testify not only that said applicant was born in this country of parents then permanently domiciled here, but also that he was engaged in the city of Seattle for a number of years in mercantile pursuits, and while so engaged, acquired an interest in the mercantile firm of Wah Chong Co.

IX.

That your petitioners, Tang Tun and Leung Kum Wui, are being restrained of their liberty without due process of law, in violation of the provisions of the Constitution of the United States.

WOO GEN, *Petitioner.*

STATE OF WASHINGTON,
County of King, ss:

Woo Gen, being first duly sworn, on oath says: That he is the petitioner named in the above-entitled petition; that he has read same, knows the contents thereof, and that the same is true.

WOO*D* GEN.

Subscribed and sworn to before me, this 15th day of Sept., 1906.

[SEAL.] JAMES J. GODFREY,
Notary Public in and for the State of Washington, Residing at Seattle.

8 Copy.

EXHIBIT "A" [to Petition for a Writ of Habeas Corpus].

Order Rejecting Applicant.

The applicant presented at the time of his arrival at this port an identification paper setting forth that he had been admitted at Port Townsend, Washington, on April 20, 1897, as a native-born citizen of the United States. He subsequently secured from Chin Quong, the manager of the Wah Chong Co. of Seattle, Washington, a copy of the identification papers on which the said admission was alleged to have been granted, the said copy bearing the following endorsement over the alleged signature of J. C. Saunders, Collector: "Arrived at Tacoma, Washington, April 10th, '97, on the Str. 'Tacoma,' from China, and admitted April 20, '97." The applicant first stated that this endorsement had been placed on his paper at the time of his admission Collector Saunders having written it in his presence and handed the paper back to him. He afterward testified, however, that he was mistaken in that statement, having recalled that he did not get the said endorsed paper until some time after his admission when it was secured for him and given to him in the Wa Chong Store by Chin Quong, the manager of the said store, who had arranged for his coming to the United States.

The records of the Port Townsend office contain the original of the endorsed paper secured by the applicant from the Wa Chong store, and such original bears the following endorsement:
9 "Rejected May 25, '97, J. C. Saunders, Collector." This endorsement is supported by the other records of the Port Townsend office under case No. 12,343.

It is a matter of record that another Chinaman and alleged native-born citizen of the United States who was rejected at the same time by the Port Townsend office, having arrived on the same ship with the applicant herein, was subsequently found in the store of the Wa Chong Co., and was arrested and after due hearing of his case before the courts, was ordered deported to China and was so deported. Further, it is a matter of record that a number of other Chinese were arrested at the same time as the deported Chinaman above men-

tioned, all having been found in the Wa Chong store, and all having been in possession of "native-born" papers bearing the alleged endorsement of Collector J. C. Saunders. Each was given due hearing before the proper courts, and each was deported to China by order of the Court on a finding that the records of the Port Townsend office did not show the landing claimed.

With a desire to treat the applicant justly, he has been given an opportunity to prove his claim of nativity, but has failed to furnish evidence which under the circumstances would justify his admission as a citizen of the United States.

There appears in his application intimation that the applicant might make a claim that he had been a domiciled merchant in the United States. His own testimony as to his occupation prior to departure shows that during the three years immediately preceding his departure he was engaged chiefly as the driver of a wagon between the Wa Chong gardens and the wholesale houses of Seattle livering vegetables and making his home at the gardens.

The applicant is therefore denied admission on the grounds:

First. That his status has already been adjudicated by officers duly charged with the enforcement of the Chinese Exclusion laws:

Second. Though given an opportunity to show that injustice may have been done by former finding in his case, the applicant has failed to furnish any evidence to support such a conclusion.

Third. The applicant has not furnished sufficient evidence of any status by which he is entitled to admission to the United States.

(Signed) H. EDSELL.
Chinese Inspector in Charge.

OFFICE OF CHINESE INSPECTOR IN CHG.,
PORT OF SUMAS, WASHINGTON, *July* 5, 1906.

Order Rejecting Leung Kum Wui.

The applicant applies for admission as the wife of a returning native-born citizen of the United States—Mr. Tang Tun. The alleged husband having this day been denied admission on the claim made, the rejection of the applicant as his wife must and does hereby follow.

(Signed) H. EDSELL.
Chinese Inspector in Charge.

[Endorsed:] Let a writ of habeas corpus issue as prayed for, returnable before this Court on Monday, September 17th, 1906, at ten o'clock A. M.

C. H. HANFORD, *Judge.*

[Endorsed:] Petition and Order. Filed in the U. S. District Court, Western Dist. of Washington. Sept. 15, 1906. R. M. Hopkins, Clerk. H. M. Walthew, Deputy.

United States District Court for the Western District of Washington.

No. 3326.

In re Application of TANG TUN & LEUNG KUM WUI for Writ of Habeas Corpus.

Appearance [of Attorneys for Petitioners].

To the Clerk of the Above-entitled Court:

You will please enter our appearance as attorneys for petitioners in the above-entitled cause; and service of all subsequent papers, except writs and process, may be made upon said petitioners, by leaving the same with

KERR & McCORD.
BELL, McCAFFERTY & GODFREY,

Office Address: Seattle Wash., 301 Mutual Life Bldg.

[Endorsed:] Appearance. Filed in the U. S. District Court, Western District of Washington, Sep. 15, 1906. R. M. Hopkins, Clerk. H. M. Walthew, Deputy.

12 United States District Court, Western District of Washington.

Writ of Habeas Corpus.

The President of the United States of America to Harry Edsell, Chinese Inspector in Charge, Sumas, Washington, Greeting:

We command you, that you have the body of Tang Tun and Leung Kum Wui, by you imprisoned and detained, as it is said, together with the time and cause of such imprisonment and detention by whatsoever name said Tang Tun and Leung Kum Wui shall be called or charged, before the Hon. C. H. Hanford, United States District Judge for the Western District of Washington, at the courtroom of said District Court, in the city of Seattle, in the Northern Division of said Western District of Washington, on the seventeenth day of September, 1906, at ten o'clock in the forenoon, to do and receive what shall then and there be considered concerning them, the said Tang Tun and Leung Kum Wui, and have you then and there this writ.

Witness the Hon. C. H. Hanford, Judge of the United States District Court for the Western District of Washington, this 15th day of September, in the year of our Lord one thousand nine hundred and six.

[SEAL.]

R. M. HOPKINS, *Clerk,*
By H. M. WALTHEW,
Deputy Clerk.

KERR & McCORD,
Attorneys for Petitioner.

13 [Endorsed:] Habeas Corpus. Returned and filed this 17th day of Sept., A. D. 1906. R. M. Hopkins, Clerk. By A. N. Moore, Deputy Clerk.

I hereby certify that I have served the within writ upon Harry Edsell, by delivering to him personally at Seattle, Washington, a true copy of said writ.

Dated Sept. 17, 1906.

C. B. HOPKINS,
U. S. Marshal,
By I. J. CRABTREE, *Deputy.*

Fees.

Service	$2.00
Travel	.12
	$2.12

In the United States District Court for the Western District of Washington, Northern Division.

No. 3326.

UNITED STATES OF AMERICA, Plaintiff,
vs.
TANG TUN and LEUNG KUM WUI, His Wife, Defendants.

Bail Bond.

Know all men by these presents, that we, Tang Tun and Leung Kum Wui, as principals, and Woo Gen and J. M. E. Atkinson, as sureties, are held and firmly bound unto the United States of
14 America in the full sum of Two Thousand Dollars ($2,000.00), lawful money of the United States, for the payment of which, well and truly to be made, we jointly and severally bind ourselves, and our and each of our heirs, executors and administrators firmly by these presents.

Sealed with our seals and dated this 17th day of September, 1906.

The conditions of the above obligations are such that

Whereas Tang Tun and Leung Kum Wui, as principals herein, and the defendants in the above-entitled action, were on the 6th day of September, 1906, ordered to be deported to the Empire of China by the Honorable Victor H. Metcalfe, Secretary of Commerce and Labor; and

Whereas said defendants were committed to the custody of Harry Edsell, Chinese Inspector in Charge at the port of Sumas, Washington, pending the carrying into effect of said order of deportation; and

Whereas on the 15th day of September, 1906, a writ of habeas

corpus was issued by the Honorable Cornelius H. Hanford, Judge of the above-entitled Court, requiring said Chinese Inspector in Charge to produce in said Court the bodies of said defendants on the 17th day of September, 1906, and at said time show cause, if any legal cause existed, for the detention of said defendants; and

Whereas at the time and place fixed for the hearing of the
15 return to said writ of habeas corpus, the plaintiff above named and the obligee in the foregoing bond, applied for a continuance of the hearing of said matter until Monday, the 24th day of September, 1906, at the hour of 10 o'clock.

Now therefore, if the said Tang Tun and Leung Kum Wui shall be and appear personally before the District Court of the United States, for the Western District of Washington, Northern Division, at the city of Seattle, State of Washington, on the 24th day of September, at the hour of 10 A. M., and then and there abide the further order of said court, and not depart beyond the jurisdiction of said court, then this obligation is to be void; otherwise to remain in full force and effect.

WOO GEN. [SEAL.]
J. M. E. ATKINSON.

STATE OF WASHINGTON,
County of King, ss:

I, Woo Gen, a resident of Seattle, King County, Washington, do solemnly swear that I am worth the sum of $2,000.00, in real property within the jurisdiction of this court over and above all my just debts and liabilities, and not subject to execution, levy and sale. That I am not an attorney at law, or other officer of the above-entitled court.

WOO GEN.

Subscribed and sworn to before me this 17th day of September, 1906.

[SEAL.] JAMES J. McCAFFERTY,
Notary Public in and for the State of Washington,
Residing at Seattle, Wash.

16 STATE OF WASHINGTON,
County of King, ss:

I, J. M. E. Atkinson, a resident of Seattle, King County, Washington, do solemnly swear I am worth the sum of $2,000.00 in real property within the jurisdiction of this court over and above all my debts and liabilities, and not subject to execution, levy and sale. That I am not an attorney at law, or other officer of the above-entitled court.

J. M. E. ATKINSON.

Subscribed and sworn to before me this 17th day of September, 1906.

[SEAL.] JAMES J. McCAFFERTY,
Notary Public in and for the State of Washington,
Residing at Seattle.

The within bond is hereby approved by me this 17th day of September, 1906.

C. H. HANFORD, *Judge.*

[Endorsed:] Bail Bond. Filed in the U. S. District Court, Western Dist. of Washington. Sep. 17, 1906. R. M. Hopkins, Clerk.

17 In the United States District Court for the Western District of Washington, Northern Division.

No. 3326.

In the Matter of the Application of TANG TUN and LEUNG KUM WUI for a Writ of Habeas Corpus.

Motion to Quash and Dismiss Writ.

Comes now Harry Edsell, Chinese Inspector in Charge, Sumas, Washington, and moves the Court to quash and dismiss the writ of habeas corpus herein granted, on the following grounds:

I.

That the petition upon which the said writ is based does not set forth facts sufficient to justify the Court in issuing a writ of habeas corpus.

II.

That it appears upon the face of the said petition that the application for admission of the petitioners was denied by the said inspector and that thereafter an appeal was prosecuted from the order of the said inspector to the Secretary of the Department of Commerce and Labor, and that the decision of the said inspector referred to was in all things affirmed.

III.

That it appears upon the face of the petition asking for said writ that it has been decided by the Secretary of the Department of Commerce and Labor of the United States, that said Chinese person, petitioner, was one not entitled to land in the United States under the laws thereof.

18 IV.

That the records and evidence taken by the Department of Commerce and Labor, and its Secretary and the officers acting under the authority of the Secretary of said Department, and the laws of the Congress of the United States, are not set forth or presented to the Court by said petitioner.

V.

That the petition is too indefinite and uncertain to justify the issuance of a writ of habeas corpus, for the reason that no attempt is made to give or state the grounds, proceedings or records in the said cause.

VI.

That the decision of the Department and officers mentioned in the said petition are conclusive upon the courts.

VII.

That this Court has no jurisdiction or power to review the determination of the Department of Commerce and Labor, or of any of its officers acting under the authority of that Department or under the laws of the Congress of the United States.

VIII.

That the findings made by the said Edsell as shown by Exhibit "A" of said petition was afterward affirmed as shown by said petition, by the Secretary of the Department of Commerce and Labor of the United States, and is binding and conclusive upon the petitioners and each of them.

Wherefore, the said Harry Edsell prays the Court that the
19 said writ of habeas corpus be dismissed and quashed, and that the costs of this proceeding be taxed against the petitioners.

P. C. SULLIVAN,
United States Attorney.
C. T. HUTSON,
Assistant U. S. Attorney.

Service of a true copy hereof hereby accepted this 24th day of September, 1906.

McCAFFERTY, BELL & J. C. WHITLOCK,
KERR & McCORD,
Att'ys for Applicants.

[Endorsed:] Motion to Quash. Filed Sept. 24, 1906. R. M. Hopkins, Clerk.

[*Order Denying Motion to Quash Writ, etc.*]

In the District Court of the United States for the Western District of Washington, Northern Division.

No. 3326.

In the Matter of the Application of TANG TUN and LEUNG KUM WUI for Writ of Habeas Corpus.

Now on this 24th day of September, 1906, this cause comes on to be heard upon motion of P. C. Sullivan, United States Attorney, to quash and dismiss the writ of habeas corpus herein granted, the court after hearing argument of counsel and being sufficiently advised in the premises, denies said motion. To which ruling of the Court the United States Attorney excepts and the exception is
20 allowed, and twenty days from this date is allowed in which to obtain evidence.

Recorded in General Order Book, U. S. District Court, Volume 1, page 233.

[*Order Allowing Time to Answer.*]

In the District Court of the United States for the Western District of Washington, Northern Division.

No. 3326.

In the Matter of the Application of TANG TUN and LEUNG KUM WUI for Writ of Habeas Corpus.

Now, on this 15th day of October, 1906, it is ordered by the Court that the United States Attorney be and he is hereby allowed ten days from this date in which to answer.

Recorded in General Order Book, U. S. District Court, Volume 1, page 233.

In the United States District Court for the Western District of Washington, Northern Division.

No. 3326.

In the Matter of the Application of TANG TUN and LEUNG KUM WUI for a Writ of Habeas Corpus.

Answer.

Comes now Harry Edsell, Chinese Inspector in Charge, at Sumas, Washington, and for answer to writ of habeas corpus issued
21 to him herein, and for answer to the petition served therewith, states as follows:

I.

Answering paragraph one of the allegations contained in said petition the said Edsell denies that the petitioner Tang Tun was born in the city of Seattle, Territory (now State) of Washington, in the year 1899, or at any other time or place within the United States, and denies that the parents of said petitioner Tang Tun at the time of the birth of said Tang Tun resided in the city of Seattle; denies that said parents were permanently or at all domiciled in said city of Seattle at said time or any other time; admits that the parents of Tang Tun, whoever they were, were Chinese; denies that he, the said Edsell, has any knowledge or information sufficient to form a belief that the said Tang Tun departed for the Empire of China and remained there for a period of thirteen years; admits that in the year 1897 the said Tang Tun came to the United States from China, but denies that after an examination of the said Tang Tun he was admitted at the Port of Port Townsend, Washington, by J. C. Saunders, the then Collector of Customs, and denies that he was ever admitted at the port of Port Townsend, or any other port by J. C. Saunders acting as Collector of Customs, or was admitted by any other person authorized under the laws of the United States to administer the laws relating to the exclusions of Chinese; denies that he has any knowledge or information sufficient to form a belief as to the allegation contained in said paragraph one, which
22 alleges that he, the said Tang Tun, entered into the employ of the mercantile firm of Wah Chong Co. at Seattle, or remained in the employ of said company as clerk and general assistant in the year 1903, or for any other period of time, or that he, the said Tang Tun, acquired any interest in said firm, or that he has ever since retained an interest in said firm, or now has any interest therein; said Edsell admits that on October 1st, 1905, the said Tang Tun did leave the United States and return to China, and admits that Tang Tun was married in accordance with the laws of China and the Consular requirements of the United States, to said petitioner, Leung Kum Wui, his co-applicant. Said Edsell also admits that on the 22d day of June, 1906, said Tang Tun returned to the United States and sought an entry at the port of Sumas, State of Washington, and that his application for admission and for the admission of his wife was denied by the Inspector in Charge; also admits that a copy of the order of rejection attached to said petition and referred to as Exhibit "A" is a true copy of the said order of rejection.

II.

Said Edsell admits the allegations contained in paragraph two of said petition.

III.

Said Edsell denies each and every allegation contained in paragraph three of said petition.

IV.

Said Edsell denies each and every allegation contained in the fourth paragraph of said petition.

23

V.

Said Edsell denies each and every allegation contained in paragraph five of said petition.

VI.

Said Edsell denies each and every allegation contained in paragraph six of said petition.

VII.

Said Edsell denies each and every allegation contained in paragraph seven of said petition.

VIII.

Said Edsell denies that he has any knowledge or information sufficient to form a belief as to any of the matters and things alleged in paragraph eight of said petition, excepting that he denies that the said Tang Tun is a native-born citizen of the United States.

IX.

Said Edsell denies each and every allegation contained in paragraph nine of said petition.

And for a further and separate defense to the said application of said petitioners, said Harry Edsell alleges:

That on the 22d day of June, 1906, the said applicants came to the United States from the Empire of China and sought an entrance into the United States at the port of Sumas, State of Washington; that said Application was made by the said petitioners, to the said Harry Edsell, who was then and there a duly qualified and acting Chinese Inspector in Charge at Sumas, Washington, acting under authority of the laws of the United States and the rules and regulations

24 of the Bureau of Immigration and the Department of Commerce and Labor of the United States, and as such Inspector in Charge has power to determine whether the said applicants were entitled to admission into the United States; that such proceedings were had before him as such inspector in charge and resulted in the finding and determination by the said inspector in charge on the 5th day of July, 1906; that neither of said applicants were entitled to admission into the United States; that neither of said applicants were citizens of the United States, and that both were natives of the Empire of China, and that the said Chinese persons were not of the class of persons who were entitled to be admitted into the United States, under the laws thereof; said Edsell also found that the status of said Tang Tun had already been adjudicated by officers duly vested with the enforcement of the Chinese exclusion laws; that al-

though the said applicant, Tang Tun, was given an opportunity to show that an injustice has been done him by the former finding in his case, he failed to furnish any evidence in support of such a conclusion; also that the applicant had not furnished sufficient evidence of any status by which he was entitled to admission into the United States; that thereafter an appeal was prosecuted from the order of rejection made by the said Inspector in Charge, as aforesaid; to the Secretary of the Department of Commerce and Labor at Washington, D. C., and such proceedings were had that said order appealed from was in all things affirmed. Said Edsell further alleges that the foregoing are the reasons why he detained the said petitioners
25 in custody and did detain them in custody for the purpose of deportation until he was served with the writ and petition in this case, when petitioners were admitted to bail by the Honorable Court; that by reason of the premises, this Court has no jurisdiction to review the action of said Inspector in Charge, or that of the Secretary of the Department of Commerce and Labor herein.

Wherefore, said Harry Edsell prays the Honorable Court that the said writ be dismissed, the application of petitioners be denied, and that the petitioners be returned to his custody or to the custody of other qualified officers of the United States for the purpose of removal therefrom.

POTTER CHARLES SULLIVAN,
United States Attorney.
WALTER CHRISTIAN,
Assistant United States Attorney.

UNITED STATES OF AMERICA,
Western District of Washington, ss:

Harry Edsell, being first duly sworn, upon his oath deposes and says: That he is the party named in the foregoing answer; that he has read the same, knows the contents thereof, and verily believes the same to be true.

HARRY EDSELL.

Subscribed and sworn to before me this 30th day of October, A. D. 1906.

WALTER CHRISTIAN,
Notary Public in and for the State of Washington, Residing at Seattle.

26 Due service of the within answer and the receipt of a true copy thereof acknowledged this 30th day of October, A. D. 1906.

JAMES A. KERR AND
J. C. WHITLOCK,
Att'y- for Def't.

[Endorsed:] Answer. Filed October 31st, 1906. R. M. Hopkins, Clerk. By A. N. Moore, Deputy.

In the United States District Court for the Western District of Washington, Northern Division.

No. 3326.

In the Matter of the Application of TANG TUN and LEUNG KUM WUI for a Writ of Habeas Corpus.

Order of Reference.

This cause coming on to be heard this 20th day of January, 1908, Elmer E. Todd, United States Attorney, and Charles T. Hutson, Assistant United States Attorney, appearing on behalf of the United States, and Kerr & McCord, and McCafferty, Bell & Godfrey, appearing on behalf of the applicant in the above-entitled matter, and it appearing to the Court that on presentation of said application for a writ of habeas corpus in the above-entitled matter a writ of habeas corpus was issued, and that an answer and return thereto has been served and filed, and that said matter is ready for hearing;

It is therefore ordered, that the above-entitled matter be referred to A. C. Bowman, United States Commissioner, for the taking
27 of testimony therein, on a day to be agreed upon by the attorneys hereto.

C. H. HANFORD, *Judge.*

[Endorsed:] Order of Reference. Filed Jan. 20, 1908. R. M. Hopkins, Clerk.

In the United States District Court for the Western District of Washington, Northern Division.

No. 3326.

In the Matter of the Application of TANG TUN and LEUNG KUM WUI for a Writ of Habeas Corpus.

Stipulation [Relative to Record, etc.]

It is stipulated by the parties hereto, the applicants appearing by Messrs. Kerr & McCord, J. C. Whitlock and McCafferty and Godfrey, attorneys, and H. Edsell appearing by Elmer E. Todd, United States Attorney, and Charles T. Hutson, Assistant United States Attorney, as follows:

That whereas, application for a writ of habeas corpus in the above-entitled court — on September 15, 1906, and

Whereas, applicants allege therein among other things that said H. Edsell, Chinese Inspector in Charge, abused the discretion imposed in him by the laws of Congress and regulations of the Department of Commerce and Labor in the manner in which he conducted the hearing upon the application of said Tang Tun and
28 Leung Kum Wui to enter the United States as a native-born citizen and wife, and also in relying on testimony of wit-

nesses in said cause, who were not sworn before giving their testimony; and

Whereas it is the desire of the parties hereto to submit to the above-entitled court the question whether or no there in reality was such abuse of discretion as alleged;

It is therefore stipulated and agreed herein, that the record herewith submitted, to wit: The record in the appeal case of Tang Tun and Leung Kum Wui, from the files of the Bureau of Immigration and Naturalization of the Department of Commerce and Labor of the United States, certified to be such by F. P. Sargent, Commissioner General of Immigration, together with exhibits numbered 1 and 2, 3, 4, 5, 6, none of which were shown to applicant or his counsel, and have never been exhibited to applicant or counsel, and the identification papers of the alleged wife, Lueng Kum Wui, and the papers setting forth the marriage of the two applicants, is the original record of the hearing upon the application of the said Tang Tun and Lueng Kum Wui to enter the United States as a native-born citizen and wife, and the appeal thereon; that attached to said papers is a copy of a telegram from the Department of Commerce and Labor at Washington, D. C., to the Immigration Service at Sumas, Washington, dismissing said appeal, and a letter corroborating said telegram; also a letter from H. Edsell, said Inspector, stating that nothing other than said telegram and letter corroborating same was received from the said Department of Commerce
29 and Labor at Washington, D. C., relative to the dismissal of said appeal; that said record filed herewith, with the said copy of telegram and letters shows every fact which the parties hereto deem necessary to present to the above-entitled court in the consideration by the said court of the allegations of the abuse of discretion; that the said parties hereto rely wholly upon said record and said telegram and letters referred to for the purposes of determination by the Court of the question of abuse of discretion as alleged in said application for a writ of habeas corpus aforesaid, and the order of reference in this case to the United States Commissioner A. C. Bowman, is hereby modified in accordance with this stipulation.

It is further stipulated and agreed, that should the above-entitled court, after examin-g the record filed herewith, find that there has been no abuse of discretion, as set forth in the petition for a writ of habeas corpus in the above-entitled case, that the said writ issued therein shall be dismissed; should the above-entitled court find abuse of discretion as alleged, then testimony in said case shall be taken as provided for in the general order of reference.

Submitted this 26 day of Feb'y, 1908.

McCAFFERTY, BELL & GODFREY,
J. C. WHITLOCK,
KERR & McCORD,
Attorneys for Applicants.
ELMER E. TODD,
United States Attorney.
CHARLES T. HUTSON,
Assistant United States Attorney.

30 [Endorsed:] Stipulation Filed in the U. S. District Court, Western Dist. of Washington, Feb. 28, 1906. R. M. Hopkins, Clerk. W. D. Covington, Deputy.

[*Order of Submission.*]

In the District Court of the United States for the Western District of Washington, Northern Division.

No. 3326.

In re the Matter of TANG TUNG and LEUNG KUM WUI for Writ of Habeas Corpus.

Now, on this day this cause comes on for final hearing; the Court, after hearing argument of respective counsel, and being fully advised in the premises, takes said matter under advisement.

Recorded in Vol. 1, page 410, U. S. District Court General Order Book.

PLAINTIFF'S EXHIBIT "F."

Ap'l 20, '97, 21 yrs., 5" 4½", 130.

STATE OF WASHINGTON,
County of King, ss:

R. L. Thorne, the undersigned, being first duly sworn, on oath deposes and says that he is a resident of King County, Washington, and has been for the past twenty-five years, and by occupation an Attorney at Law. In the year 1876 I resided the most of the time at Renton, in the aforesaid county and State, and have re-
31 sided there permanently since 1880, up to the present time. Affiant further testifies that during the time he lived there in 1876, one Chinaman by the name of Sing Lee, with his wife, resided there and run a laundry. During their stay at Renton a son was born to them; I believe his name was Teft Mun, who at this time would be about 20 years old.

R. L. THORNE.

Subscribed and sworn to before me, the undersigned, a Notary Public, this 15th day of April, 1897.

[SEAL.] HIRAM J. JACOBS,
Notary Public in and for the State of Washington, Residing at Seattle, Washington.

[Endorsed:] 251—Minor Son Rejected. Teft Mun, Son of Sing Lee, Renton. 12342. Held at Vancouver, B. C. Rejected May 25-97, by J. C. S. Colt, at Port Townsend, Wn. Apr. 20, 1897. Ex. "F." Filed in the District Court, Western Dist. of Washington. May 1, 1908. R. M. Hopkins, Clerk. A. N. Moore, Deputy.

PLAINTIFF'S EXHIBIT "H."

(*Copy Telegram.*)

13 CR/R. B. 12 Paid Gov't. 3:35 P. M.

WASHINGTON, D. C., *Sept.* 6, '06.

Immigration, Sumas, W'n:

Appeal Tang Tung and Leung Gum Wui Dismissed.

MURRAY.

32 Department of Commerce and Labor,
Immigration Service.

OFFICE OF CHINESE INSPECTOR IN CHARGE,
SUMAS, WASH., *February* 24, 1908.

No. 909.

Charles T. Hutson, Assistant U. S. Attorney, Pioneer Bldg., Seattle, Wash.

SIR: I beg to transmit herewith a copy of departmental telegram of September 6, 1906, dismissing the appeal in the cases of Tang Tun and Leung Kum Wui. A verified copy of his telegram was subsequently received from the Department by mail, but no other opinion or record of departmental action on the appeals in these cases was ever received by this office.

In this connection I would request that in submitting these cases to the Court, you make due arrangements for the return of the records and exhibits, in order that our service may not be inconvenienced in future by not having the records to refer to promptly.

Respectfully,

H. EDSELL,
Chinese Inspector in Charge.

JMS—Encl.

[Endorsed:] Exhibit "H." Filed in the U. S. District Court, Western Dist. of Washington. May 1, 1908. R. M. Hopkins, Clerk. A. N. Moore, Deputy.

33 PLAINTIFF'S EXHIBIT "J."

(*Copy Telegram.*)

SEATTLE, WASH., *Aug.* 15, 1906.

Immigration, Seattle, Wash.

I have no objection to copying of all testimony in Tang Tun case by his attorneys, record not to be removed from your custody.

EDSELL.

Attest:

H. EDSELL,
Chinese Inspector in Charge.

Official Business—Chg. Dept. Commerce & Labor, Bureau Immigration. Chinese Excl. Fund, 1907. Frank 2795.

[Endorsed:] Ex. "J." Filed in the U. S. District Court, Western Dist. of Washington. May 1, 1908. R. M. Hopkins, Clerk. A. N. Moore, Deputy.

PLAINTIFF'S EXHIBIT "K."

(*Copy Telegram.*)

On Blank of Postal Telegraph-Cable Company.

909—37 Z—D B 18 Paid.
Seattle, W'n. Aug. 13, 4:45 P. M.

H. Edsell, Chinese Inspector in Charge, Sumas:

Please authorize Inspector in Charge Estell to permit me make copies of new testimony in Tan Tung Case.

JAMES J. GODFREY.

[Endorsed:] Exhibit "K." Received Aug. 14, 1906. Immigration Service, Sumas, Wash. Filed in the U. S. District Court,
34 Western Dist. of Washington. May 1, 1908. R. M. Hopkins, Clerk. A. N. Moore, Deputy.

[*Opinion In re Tang Tun et ux., In re Gang Gong, and In re Can Pon.*]

United States District Court, Western District of Washington, Northern Division.

No. 3326.

In re TANG TUN and LEUNG KUM WUI.

No. 3606.

In re GANG GONG.

No. 3647.

In re CAN PON.

Habeas Corpus for Relief of Alleged Citizens of Chinese Parentage, Whose Right to Enter the United States was Denied by Officers of the Immigration Bureau.

McCafferty & Godfrey, Kerr & McCord, for Tang Tun and Wife.
Fred H. Lysons, Will H. Thompson, for Gang Gong.
Hammond & Hammond, for Can Pon.
Elmer E. Todd, U. S. District Attorney,
Charles T. Hutson, Ass't U. S. Attorney,
Frederick G. Dorety, Ass't U. S. Attorney, for United States.

35 [*Opinion In re Tang Tun et ux.*]

HANFORD, *District Judge:*

In the first of these cases a man and his wife are contending for the right to come into the United States to reside permanently, and

their right has been denied by officers of the Government, on the ground that they are Chinese persons who are, by the laws of this country, prohibited from entering. The husband, although of Chinese parentage, has discarded the queue and garb which distinguish the Chinese in outward appearance from the people of other nationalities, and he claims this as his native country and the rights of a citizen. The evidence proves conclusively that Tang Tun lived at Seattle continuously for a period of about eight years previous to September, 1905, during which period he was an employee of the Wa Chong Company, a well-known Chinese firm engaged in mercantile business and operating a market garden near Seattle, and he became acquainted with well-known citizens who have given testimony in his behalf and who were acquainted with the man he claims as his father.

The evidence also proves conclusively that Tang Tun came to Puget Sound from China on the steamship "Tacoma" in the year 1897, having then in his possession certain affidavits made by citizens of Seattle, which he exhibited to the Collector of Customs as evidence to establish his identity and nativity. The law in force at that time vested in the Collector of Customs authority to decide as to the right of Chinese persons coming to the United States by
36 sea, to land and remain in this country, and the Collector made an indorsement upon said identification affidavits, indicating the date of arrival, the name of the vessel, and his decision permitting the contestant to land and signed and delivered the affidavits so indorsed to the contestant, but retained duplicates upon which he made an endorsement indicating a contrary decision, and he also made a record that the contestant's right to enter the United States had been denied. Notwithstanding the record in the custom-house, the contestant did live in Seattle, and was employed by the Wa Chong Co. as above stated, until September, 1905, when he was given a $1,000.00 interest in his employer's business, and he then went to China and was there married. The marriage was solemnized by Rev. C. A. Nelson, a Christian missionary at the American Consulate at Canton, China, May 21, 1906, and is evidenced by a marriage certificate signed by P. S. Heintzleman, Vice and Deputy Consul General of the United States of America, and authenticated by the seal of the Consulate.

The case appears to me to have been overworked, that is to say, the attorneys have weakened the case for their clients by unnecessarily calling as witnesses Mr. Fitzhenry and Mr. Burritt, whose testimony as to the most important facts is unbelieveable. These witnesses have been, in times past, acquainted with many of the Chinese inhabitants of Seattle, are called frequently to testify with respect to the identity of different Chinese persons claiming to have
37 been born in Seattle. Attorneys looking for this kind of evidence find them convenient, and it appears to be easy to convince them of their ability to verify, from memory, facts suggested by others with respect to Chinese families, but their stock of Chinese reminis-ences appears to have been exhausted. In this case both of them made bad guesses when interrogated with respect to a photo-

graph of Tang Tun. I reject their testimony entirely, but I deem it to be the duty of the Court to give fair consideration to the other evidence, notwithstanding this objectionable feature of the case. After making due allowance for obvious mistakes and errors in the testimony of Tang Tun and his other witnesses, I am convinced by their positive statements that there was a Chinaman named Quong Lee, who was a merchant, and that he lived with his wife in Seattle from 1878 until 1884. There is no contradiction in the record of the positive testimony of Tang Tun, that he is Quong Lee's son, that he was born in the year 1879, and that he lived with his father in China from about 1884 until his father dies; that he came to the United States in 1897, and that before coming, the identification affidavits, above referred to, were procured by the manager of the Wa Chong Company in Seattle. He is a competent witness to prove these facts, and I find no ground for discrediting his testimony except such minor mistakes and errors as may be found in the testimony of the average run of witnesses. Mr. William B. Thompson, a member of the police force of Seattle, whose veracity
38 appears to be unquestioned, was examined as a witness and testified that during the period from 1878 to 1884 he was engaged in the trucking and draying business in Seattle, and did work in that line for a Chinese firm of which Quong Lee was manager, and that he frequently saw children, a boy and a girl, at the place of business of said firm who appeared to be Quong Lee's children, and that the boy appeared to be about three years of age when he first noticed the child, and about six years of age when the family returned to China, which according to the report of his testimony was in 1878 or 1879. This last statement is clearly an inadv*enture*, shown to be such by the testimony in its entire*ly*, and by Mr. Thompson's statements. The other evidence fixes the time of departure in the year 1884, and if the boy was five or six years old then, he must have been born during the time of Quong Lee's residence in Seattle. Mr. Thompson saw him after his admission to this country in 1897, and became so well satisfied as to his identity that he felt justified in making a positive statement in his testimony, that this is the same boy whom he knew in childhood as the son of Quong Lee. I consider that there is more than a mere preponderance of the evidence in favor of the contestants, and that the right of Tang Tun, to invoke the jurisdiction of this Court to protect him in his rights as a citizen of the United States, notwithstanding the provisions of the Chinese exclusion law denying such right to alien Chinese, has been well established. This Court must and
39 does respect the decision of the Supreme Court in the case of Ju Toy, 198 U. S., 253, and must disclaim jurisdiction, unless the contestants have proved that the Chinese Inspectors, and the Secretary of Commerce and Labor, have unjustly denied their right to enter the United States without giving them a fair and impartial hearing. The contestants have charged the representatives of the Government with unfair treatment in the investigation made of their case and with having rendered an adverse decision, con-

trary to the facts and the law applicable, and by making such charge, have assumed the burden of proving it. The Court finds that the truth of this accusation has been clearly and completely established by the evidence. The reasons which the Inspector gave for excluding these contestants from this country as as follows:

"First. That applicant's status has already been adjudicated by officers duly charged with the enforcement of the Chinese Exclusion Laws;

Second. Though given an opportunity to show that injustice may have been done by the former finding in this case, applicant failed to furnish any evidence to support such a conclusion;

Third. The applicant did not furnish sufficient evidence of any status by which he was entitled to admission to the United States.

The third reason for rejection was for the purpose of covering the apparent intention of the applicant to set up for himself the claim that he was a domiciled merchant."

The first of the assigned reasons has reference to the determination of the question of Tang Tun's nativity
40 by the Collector of Customs in 1897, which the Inspector assumed to have been adverse; in this the prejudice of the Inspector and the unfairness of his decision is clearly indicated, because the conclusion reached is contrary to the indisputable fact that Tang Tun was not excluded, but was admitted to this country and lived here not in concealment, but openly for eight years, his presence being known to many people, including one of the Chinese Inspectors, Mr. Thos. M. Fisher, Jr., who so certifies in a report which he made on this case, which report is in the record. The record which the Collector made in the custom-house by indorsements on papers filed there furnishes the only supposable basis for the Inspector's conclusion. That record, however, if not by any statute declared to be legal evidence, and it would not be competent in any court of the United States to prove any fact. It is authenticated only by handwriting and signature of the man who was at the time Collector of Customs, and it is contradicted by a certificate in the handwriting of and signed by the same Collector upon the original document which he delivered to Tang Tun, as evidence of his right to be in this country. In an endeavor to impeach the Collector's indorsement, showing that Tang Tun had been *ad*mitted to enter the United States, the Inspector in his report certifies that several other Chinese persons having similar documents indorsed in a similar manner by the same Collector had been arrested on the premises of the Wa Chong Company, and had been, notwith-
41 standing their possession of the Collector's certificates, deported from the United States, pursuant to an order made by a United States Commissioner, after a judicial investigation. If that evidence is relevant to the issue in this case, it is at least a two-edged sword. It tends to prove only that the Collector of Customs had been guilty in those instances of conniving at evasions of the Chinese exclusion law by furnishing fraudulent certificates. On the other hand, the arrest and deportation of the other Chinese persons hold-

ing such certificates proves the vigilance of the officers charged with enforcement of the Chinese exclusion law, other than the Collector, and that they had knowledge of his fraudulent practices, and justifies an inference that Tang Tun would have been arrested and deported by them when the others were, if he had not been deemed to be lawfully entitled to remain in this country.

The second of the assigned grounds contains a glaring manifestation of prejudice on the part of the Inspector. In this he certified that although he considered the decision of the Collector of Customs as being adverse to the right of Tang Tun, to enter the United States and a final adjudication of the whole matter, he nevertheless afforded a fair opportunity to prove that decision to have been unjust, and that the "applicant failed to furnish evidence to support such a conclusion." In a sentence he eliminates not only the testimony of Fitzhenry, Burritt and Coombs, who are regarded by the
42 officers of the Immigration Bureau as professional witnesses in Chinese cases, but the testimony also of a man who for many years has been trusted as a member of the police force of Seattle, whose testimony has not been contradicted and has been corroborated by Mr. Fisher, as to the important fact, that Tang Tun was employed by the Wa Chong Company in Seattle for a considerable time after the date of the supposed adverse decision by the Collector of Customs. It is unnecessary to comment on the third of the assigned grounds, because the contestants are not asserting a right to enter the United States as privileged aliens.

If there is error in the opinion of this Court with respect to the prejudice and unfairness of the Inspector, still the contestants have sustained the charge made against the Government, because, under the law, they were entitled to have the case reviewed by the Secretary of Commerce and Labor, and when appealed to, his decision constitutes the final determination of the rights of an alien Chinese person to come into this country. An appeal was taken in this case, and the only response to it, appearing by the record, was the following telegraphic message: "Appeal Tang Tun and Leung Kum Wui dismissed. Murray." There being positive testimony uncontradicted, which if carefully analyzed and fairly considered would have justified a reversal of the Inspector's decision, I am bound to understand the telegram as being literally true, indicating that the case did not receive any consideration whatever by the Secretary of Commerce and Labor, but some officer of the Department, acting for or in place of the Secretary, refused to entertain the appeal
43 and arbitrarily without deigning to assign a reason, dismissed it, and I must conclude that a man who by competent evidence has established a right to enjoy liberty to come and go freely in his own country, and to the protection which the constitution of the United States guarantees, has been denied such a hearing by officers of the Government, as the laws enacted by Congress provide for, and by reason of such denial this Court is obligated to exercise its power for his protection. Chin Gow v. United States, —. His wife has the same legal status that he has, and a legal right to live with her husband in this country.

U. S. v. Mrs. Gue Lim, 83 Fed. Rep. 136, 176 U. S. 459.

[Opinion in] Gang Gong Case.

I have studied laboriously all of the testimony in Gang Gong's case and the improbability of some of the statements reported to have been made by the contestant when under examination by the Chinese Inspector gave rise to a suspicion in my mind that he may have been jobbed by the interpreter, and being unable to render a decision satisfactory to myself, based upon the record submitted to me, without further inquiry, I caused the man to be brought into court and whrough a different interpreter in the presence of his attorneys, I carefully interrogated Gang Gong, in a manner to afford him the fairest possibly opportunity to state facts, which, if they existed, should have been known to him and which would
44 have led me to a conclusion favorable to him, but although his statements on this examination varied in some particulars from his testimony taken before the inspector, he repeated some of the things which I deem improbable, and he also persisted in contradicting his alleged father in regard to facts of vital importance. I must say that the examination did not dispel the doubts which previously existed, and that there is not a sufficient convincing power in all of the evidence to justify a finding that this contestant was born in Seattle as he claims.

[Opinion in] Can Pon Case.

The investigations of the Chinese inspectors, which resulted in their denial of the right of this contestant to enter the United States, were conducted in a manner resembling the work of detectives more than a judicial inquiry. Mr. Fisher, who made the first report of the case, recommended to the Inspector in Charge that Can Pon should be admitted. In the record of the subsequent examination of witnesses Mr. Monroe, whose report to the Inspector in Charge appears to have been adopted, at different places without the contestant or his attorneys being present, there is manifested a zeal to elicit adverse testimony inconsistent with that degree of fairmindedness required of a trier in passing upon a question so important as that involved in the assertion of a man's right to return to his native land. It appears that Mr. Monroe received and gave credence to statements made by a Chinese laundryman, named Chin Leong, who refused to make his statement under oath. I find also that
45 in his examination of Look Wing, the father of Can Pon, Mr. Monroe in several instances evinced a hostile disposition by jeering the witness for being unable to give satisfactory responses to vexatious compound interrogatories.

In his report to the Inspector in Charge, besides commenting on discrepancies and contradictions in the testimony and quoting the statement of Chin Leong to the effect that he knew Look Wing personally and that the latter never had a wife and children in Seattle, Mr. Monroe makes the following statement:

"The census of Seattle Chinese, made in 1895, gives the name of

this Look Wing, but not the name of his wife or alleged boys. We have reason to believe this census to be very reliable as great care was taken in its compilation."

The record, however, contains no other information by which the accuracy of the census referred to may be judged.

The case having been decided adversely to the right of Can Pon to come in, an appeal was taken to the Secretary of Commerce and Labor, and in sending up the record, the testimony of one of the witnesses which was, in the main, favorable to the contestant, was inadvertently omitted, and therefore did not receive consideration in the department. The record contains a recommendation by the Commissioner General of Immigration and Naturalization that the appeal be dismissed, and also a report of Charles Earl, Solicitor of the Department of Commerce and Labor, which, so far as it
46 is material, reads as follows:

"The appellant, who is now about fifteen years old, claims to be the son of Look Wing, and to have been born in Seattle and to have lived there until he was about seven years old, when he went to China with his parents. His right to admission depends upon the establishment of the fact of his birth as claimed.

The testimony given is so columinous and the statements of the various witnesses are so confusing that an analysis of the testimony is impracticable. Whether or not there might be deduced from the mass of testimony a story which is reasonable and which is consistent with the assumption that the appellant was born in the United States, it is certainly true that he has failed to establish his claim with that degree of certainty which should be required.

In order to assume that the appellant was born in the United States, as claimed by the alleged father, it would be necessary to assume that the alleged father made a misstatement when he said in his examination of June 6, 1907 (See record in case of Look Wing), that neither his wife or his children had ever been in the United States or that the record of that examination was wrong, and, in short, to assume that the record of his testimony is full of inaccuracies or that his condition of mind since his sickness in 1905 (See affidavit and testimony of Dr. Maxson, pp. 69 and 85-86) has been such that he did not comprehend the statements he made as to where he worked at different times and location and name of the laundry which he claims to have owned and in which he
47 claims that the appellant was born. And if the alleged father's testimony is thrown out on account of its unreliability, we are no better off, for we must then rely upon the testimony of those who were not in position to know the essential facts, and this testimony is so contradictory and so uncertain as to be of little value in arriving at a satisfactory conclusion.

It is recommended that the appeal be dismissed."

And it appears by the record that the appeal was dismissed by Chas. Earl, Acting Secretary. The statutes cannot be so construed or applied as to deprive citizens of their birthright and the power of the judicial branch of the Government to relieve against oppression amounting to deprivation of liberty cannot be restricted, to any ex-

tent greater than is necessary for the exercise of the functions which naturally and properly pertain to the executive branch. Laws which confer judicial discretion upon administrative officers must be construed with a degree of strictness requisite to make them consonant with the spirit of the fundamental doctrines of the Constitution. Having this principle in mind, I hold that as applied to a case involving a question as to the right of an individual, claiming to be a citizen, to enter the United States, the law which gives the right to appeal to the head of an executive department from an adverse decision by a subordinate official places a grave responsibility upon an officer of exalted station, requiring him to give personal consideration to the appeal and to render an impartial decision, which is
48 incompatible with the right to delegate his discretionary power. I do not mean to intimate that the appeal may not be lawfully disposed of by an acting secretary, who for the time being is the incumbent of the office, but I hold that it is contrary to the intent of the law for an acting secretary to dispose of an appeal by dismissing it, on the recommendation of himself acting in the capacity of a solicitor adversely to the appellant.

It is true that the testimony which the solicitor had to consider is by reason of discrepancies and contradictions therein confusing and difficult to analyze, and considering the manner in which it was gathered it would be unreasonable to expect clear, concise, positive, consistent and uncontradicted statements. To what extent apparent discrepancies and contradictions might have been harmonized or eliminated, if the contestant had not been deprived of the services of his attorneys in the examination of the different witnesses, it is impossible to conjecture. Experience is judicial; investigations teaches the lesson that witnesses are not infallible and that discrepancies and contradictions in the testimony of a number of witnesses are to be expected. When all the witnesses have been well coached and drilled and the same story is repeated by them without variation, a natural and justifiable inference arises that all of their testimony is the product of a single mind. Such inferences are usually quite as difficult to dispose of as the doubts created by discrepancies and contradictions. In all cases in which rights depend upon
49 facts to be ascertained, the trier is bound to be patient and painstaking, even when it is troublesome to do so, in sifting the evidence in order to separate kernels of truth from masses of straw and chaff.

Officers charged with the duty of enforcing the Chinese exclusion law are to be commended for being alert to detect attempts to evade its provisions by imposters claiming to be American-born, and due allowance must be made for the inherent difficulty of uniting unswerving fidelity in detective work with judicial impartiality. From all that appears by the record, I am convinced that in this case the zeal of the inspectors who made the original decision adverse to the contestant, created a bias sufficient to prevent fair treatment, including an opportunity to interrogate the witnesses against him, or to rebut their statements and fair consideration of the evidence in his favor; and that his appeal to the Secretary of Commerce and Labor was dismissed without a consideration of the

case, upon its merits, so that the contestant did not have the semblance of a judicial inquiry or a fair consideration of his case. In order to decide the questions as to the legality and finality of the decision rendered by the Inspector in Charge, adverse to the contestant, and of the dismissal of the appeal by the acting Secretary, I have necessarily considered the entire mass of testimony, contained in the record, as made up for presentation in the case to the Secretary on the appeal, as well as the testimony reported by the
50 referee appointed by the Court in the present proceeding; but the question of prime importance in the case, is—whether the contestant is or is not a native-born citizen of the United States, and the decision of that question must be founded upon legal and competent evidence. The contestant is not bound by the ex parte affidavits, statements, letters and miscellaneous information collected by the industry of the Inspectors. Therefore, for the purpose of this branch of the case, the Court excludes all of the record on appeal, except the statements contained therein made by the contestant himself, and his witnesses who were examined before the referee. In so far as those statements conflict with the testimony of the same witnesses given before the referee, they will have to be considered as impeaching evidence. In the evidence reported by the referee there is positive testimony to the effect that Look Wing did for a number of years operate a laundry on Western Avenue in the city of Seattle at or near the corner of Bell Street; that there was living with him in said laundry, his wife; that there was born to them in that laundry two boys, of whom Can Pon is the younger; that the family left Seattle and went to China in the year 1899; that Look Wing returned to Seattle, remained for a time, then made a second trip to China and returned a few months prior to the appearance of Can Pon at Sumas, where his entrance into the United States was intercepted by the Chinese Inspectors. This testimony is so well corroborated by Mr. Raymond, as well as by Chinese witnesses,
51 that notwithstanding all errors and mistakes, I am convinced that Can Pon was born in the city of Seattle as he claims. He is, therefore, by force of the 14th Amendment to the Constitution of the United States, a citizen, and entitled to enjoy liberty in his own country. United States v. Wong Kim Ark, 169 U. S. 649.

I direct that decrees be entered in the cases of Tang Tun, and his wife, and Can Pon, discharging each of them from custody; and in the case of Gang Gong, remanding him to be deported.

C. H. HANFORD, *Judge.*

[Endorsed:] Opinion. Filed May 18, 1908. R. M. Hopkins, Clerk. By A. N. Moore, Deputy.

In the United States District Court for the Western District of Washington, Northern Division.

No. 3326.

In the Matter of the Application of TANG TUN and LEUNG KUM WEI for a Writ of Habeas Corpus.

Order of Discharge.

This matter coming on regularly to be heard this — day of June, 1908, the petitioner being represented by his attorneys, Messrs. Kerr & McCord, J. C. Whitlock and McCafferty & Godfrey, and the United States being represented by Assistant United States
52 Attorney, Charles E. Hutson, and after listening to arguments of counsel and having heard and considered the evidence in this case and being fully advised in the premises, it is hereby ordered and adjudged as follows:

That heretofore and on the 18th day of May, 1908, this Court by its opinion found that Tang Tun was born in the city of Seattle, State of Washington, United States of America in the year 1879, and that he was the son of Quong Lee and wife, and that his parents at *at* the time of his birth were lawfully domiciled in the city of Seattle, King County, Washington, and that Tang Tun resided in the United States from the time of his birth in 1879 until the year 1884, when he departed from the Empire of China, together with his parents, and remained there for a period of thirteen years; that in the year 1897 he returned to the United States and after an examination at the Port of Port Townsend, Washington, by Honorable J. C. Saunders, then Collector of Customs, was duly admitted to the United States as a native-born citizen thereof, and Tang Tun then returned to Seattle and entered the employ of the mercantile firm of Wah Chong & Company and remained with said Wah Chong & Company until the year 1905, when he again returned to the Empire of China, together with his parents and remained there married to one Leung Kum Wei, who has been his co-applicant in this proceeding.

That heretofore, to wit, on the 16th day of September, 1907, Tang Tun and wife, through Woo Gen, as petitioner, secured a
53 writ of habeas corpus in this court directed to Harry Edsell, Chinese Inspector in Charge at Sumas, Washington, and now the Court having considered the law and the evidence and having heretofore filed its opinion in this case finding that Tang Tun is a native-born citizen of the United States and entitled to all the rights, privileges and immunities of a citizen, it is

Ordered, adjudged and decreed that the said Tang Tun and Leung Kum Wei be and they hereby are discharged from the custody of the United States Marshal, the Chinese Inspector in Charge at Sumas or any other person who may claim to have him in custody on behalf of the United States.

It is further ordered that the Clerk of this Court supply Tang Tun with a certified copy of this order of discharge with a photograph attached.

It is further ordered and directed that the bail bond in the sum of $2,000 heretofore given and signed by Woo Gen and J. M. E. Atkinson as sureties be and the same are hereby discharged from all liability in the premises, and said bond is hereby vacated.

Done in open court this 18th day of June, 1908.

C. H. HANFORD, *Judge.*

(Photograph of man, woman and child.)

To the foregoing order and each and every portion thereof said H. Edsell, Chinese Inspector in Charge at the Port of Sumas,
54 Washington, for the United States, by his Attorneys, Elmer E. Todd, U. S. Attorney, and Charles T. Hutson, Ass't U. S. Attorney, duly excepts, and said exception is herein allowed.

C. H. HANFORD, *Judge.*

[Endorsed:] Order of Discharge. Filed in the U. S. District Court, Western Dis't of Washington. Jun- 18, 1908. R. M. Hopkins, Clerk. W. D. Covington, Deputy.

In the United States District Court for the Western District of Washington, Northern Division.

No. 3326.

In the Matter of the Application of TANG TUN and LEUNG KUM WUI for a Writ of Habeas Corpus.

Petition for Appeal to the United States Circuit Court of Appeals for the Ninth Circuit and Order Allowing the Same.

H. Edsell, Chinese Inspector in Charge at the port of Sumas, Washington, for the United States Government, the respondent in the above-entitled cause, by Elmer E. Todd, United States Attorney for the Western District of Washington, and Charles T. Hutson, Assistant United States Attorney for said District, feeling himself aggrieved by the order and judgment of discharge made and
55 entered and filed on the 18th day of June, 1908, does hereby appeal from said order and judgment of discharge to the United States Circuit Court of Appeals for the Ninth Circuit, and prays that his appeal may be allowed, and that a transcript of the record and all proceedings and papers upon which said order and judgment were made and entered, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit.

Your petitioner respectfully prays that on account thereof this appeal be allowed to correct the errors complained of, and to reverse, annul and set aside the said order and judgment made and entered in the premises on the 18th day of June, 1908.

Your petitioner further says that he has this day filed herein his assignment of errors committed in the above-entitled proceeding, and intended to be urged by your petitioner as appellant upon the prosecution of this suit upon appeal.

Your petitioner further says that this appeal is prosecuted by and under the direction and authority of the Attorney General of the United States of America on behalf of the United States of America, and respectfully prays that said appeal may be allowed without bond.

Dated at Seattle, Washington, this 18th day of June, 1908.

ELMER E. TODD,
United States Attorney.
CHARLES T. HUTSON,
Assistant United States Attorney.

56 And now on this 18th day of June, 1908, it is ordered that the appeal prayed for in the foregoing petition be allowed as prayed for by said H. Edsell, Chinese Inspector in Charge at the Port of Sumas, Washington, for the United States Government.

And it is further ordered, that the said applicants, Tang Tun and Leung Kum Wui, and each of them, may be enlarged pending the said appeal, upon executing a recognizance, with sureties, in the sum of one thousand dollars for each applicant, to the satisfaction of the clerk of the above-entitled court, for their appearance to answer the judgment of the United States Circuit Court of Appeals for the Ninth Circuit, and upon their failure to give bail, to remain in the custody of the immigrant inspector in charge at the port of Sumas.

C. H. HANFORD,
United States District Judge Presiding in said Western District of Washington.

Due, legal and timely service of the within and foregoing petition for appeal and order allowing the same, and the receipt of a true copy thereof acknowledged at Seattle, Washington, this 18th day of June, 1908.

KERR & McCORD,
J. C. WHITLOCK,
McCAFFERTY & GODFREY,
Attorneys for Tang Tun and Leung Kum Wui.

[Endorsed:] Petition for Appeal and Order Allowing Same. Filed June 18, 1908. R. M. Hopkins, Clerk. By A. N. Moore, Deputy.

57 In the United States District Court for the Western District of Washington, Northern Division.

No. 3326.

In the Matter of the Application of TANG TUN and LEUNG KUM WUI for a Writ of Habeas Corpus.

Assignment of Errors.

Comes now H. Edsell, Chinese Inspector in charge at the port of Sumas, Washington, for the United States Government, the respondent and appellant in the above-entitled cause, by Elmer E. Todd, United States Attorney for the Western District of Washington, and Charles T. Hutson, Assistant United States Attorney for the said District, and says that in the record and proceedings in this cause and in the order and judgment of discharge made, entered and filed herein on the 18th day of June, 1908, there is manifest error in this, to wit:

I.

That the Court erred in granting the application for the writ of habeas corpus.

II.

That the Court erred in finding that applicants, Tang Tun and Leung Kum Wui, were wrongfully restrained of their liberty by H. Edsell, Chinese Inspector in Charge at the Port of Sumas, Washington.

III.

58 That the Court erred in finding that the applicants, Tang Tun and Leung Kum Wui, were unlawfully detained in custody by H. Edsell, Chinese Inspector in Charge at Sumas, Washington.

IV.

That the Court erred in finding that the applicants, Tang Tun and Leung Kum Wui, were wrongfully and unlawfully detained in custody by the Bureau of Immigration of the Department of Commerce and Labor of the United States.

V.

That the Court erred in finding that when considering the testimony in this cause that it was first necessary to ascertain the nativity of the applicants Tang Tun and Leung Kum Wui.

VI.

That the Court erred in not finding that the only question before the Court in this cause was the question of whether or no the officials

of the Department of Commerce and Labor and the Bureau of Immigration thereof abused the discretion confided to them in conducting the hearing upon the application of the applicants, Tang Tun and Leung Kum Wui, for admission into the United States, and the appeal thereof.

VII.

That the Court erred in finding that H. Edsell, Chinese Inspector in Charge at the Port of Sumas, Washington, abused his discretion as such officer of the United States Government, in that he did not give said applicants, Tang Tun and Leung Kum Wui, a fair and impartial hearing on their application for admission into the United States as native-born citizens thereof.

59

VIII.

That the Court erred in finding that H. Edsell, Chinese Inspector in Charge at the Port of Sumas, Washington, was guilty of unfair treatment in the investigation of the rights of the applicants, Tang Tun and Leung Kum Wui, for admission into the United States.

IX.

That the Court erred in finding that the appeal taken by the applicants, Tang Tun and Leung Kum Wui, from the decision of H. Edsell, Chinese Inspector in Charge, at Sumas, Washington, denying them admission into the United States, to the Secretary of Commerce and Labor at Washington, received no consideration by the said Secretary of the Department of Commerce and Labor at Washington, D. C.

X.

That the Court erred in finding that the applicants, Tang Tun was a native-born citizen of the United States.

XI.

That the Court erred in finding that the applicants, Tang Tun and Leung Kum Wui, are husband and wife.

XII.

That the Court erred in finding that said applicants, Tang Tun and Leung Kum Wui, were entitled to be discharged from the custody of H. Edsell, Chinese Inspector in Charge at the Port of Sumas, Washington.

XIII.

That the Court erred in ordering and directing that the
60 said H. Edsell, Chinese Inspector in Charge at Sumas, Washington, should discharge the applicants, Tang Tun and Leung Kum Wui, from custody and detention.

XIV.

That the Court erred in ordering and directing the applicants to be released from the custody of the officers of the Bureau of Immigration, Department of Commerce and Labor of the United States.

XV.

That the Court erred in rendering a decree discharging applicants Tang Tun and Leung Kum Wui from the custody of the officers of the United States and restoring them to their liberty.

XVI.

That the said order of discharge is not supported by the law controlling in the premises.

XVII.

That said order of discharge is contrary to the facts in the premises.

XVIII.

That the said order of discharge is not warranted by nor supported by the facts or the law in the premises, but is contrary thereto.

XIX.

That the Court erred in failing to remand the applicants, Tang Tun and Leung Kum Wui, to the custody of H. Edsell, Chinese Inspector in Charge at Sumas, Washington.

61 Whereas, H. Edsell, Chinese Inspector in Charge at the port of Sumas, Washington, respondent and appellant herein, prays that his assignment of errors be entered upon the record in this cause, and that upon the hearing of this appeal, it may be adjudged by the United States Circuit Court of Appeals for the Ninth Circuit that the order and judgment of discharge made and entered in this proceeding on the 18th day of June, 1908, be in all things reversed, set aside and held for naught, and that it be adjudged and decreed that the applicants, Tang Tun and Leung Kum Wui, be remanded to the custody of the respondent herein to be deported according to law.

ELMER E. TODD,
United States Attorney.
CHARLES T. HUTSON,
Assistant United States Attorney.

Due, legal and timely service of the within and foregoing assignment of errors, and the receipt of a true copy thereof acknowledged at Seattle, Washington, this 18th day of June, 1908.

JOHN C. WHITLOCK,
KERR & McCORD,
McCAFFERTY & GODFREY,
Attorneys for Tang Tun and Leung Kum Wui.

[Endorsed:] Assignment of Errors. Filed June 18, 1908. R. M. Hopkins, Clerk. By A. N. Moore, Deputy.

62 In the United States Circuit Court of Appeals for the Ninth Circuit.

No. 3326.

In the Matter of the Application of TANG TUN and LEUNG KUM WUI for a Writ of Habeas Corpus.

Citation [on Appeal—Copy].

THE UNITED STATES OF AMERICA, *ss:*

To Tang Tun and Leung Kun Wui and to Messrs. Kerr & McCord, J. C. Whitlock and McCafferty & Godfrey, their Attorneys, Greeting:

You and each of you are hereby cited and admonished to be and appear before the United States Circuit Court of Appeals for the Ninth Circuit, at the city of San Francisco, in the State of California, within thirty days from the date of this citation, pursuant to an appeal filed in the Clerk's office of the United States District Court for the Western District of Washington, in a proceeding therein entitled "In the matter of the application of Tang Tun and Leung Kum Wui for a writ of habeas corpus," numbered 3326, and show cause, if any there be, why the order and judgment of the United States District Court for the Western District of Washington, in said appeal mentioned, should not be reversed, set aside and held for naught, and why speedy justice should not be done in that behalf.

63 Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 18th day of June, 1908.

[SEAL.] C. H. HANFORD,
United States District Judge, Presiding in said Western District of Washington.

We, Kerr & McCord, J. C. Whitlock and McCafferty & Godfrey, attorneys for the applicants, Tang Tun and Leung Kum Wui, named in the foregoing and above-entitled cause on this 18th day of June, 1908, do hereby accept due, legal and personal service of this citation for and on behalf of said applicants, Tang Tun and Leung Kum Wui, at the city of Seattle, County of King and State of Washington, in the Western District of Washington.

J. C. WHITLOCK,
KERR & McCORD,
McCAFFERTY & GODFREY.

[Endorsed:] Citation. Filed June 18, 1908. R. M. Hopkins, Clerk. By A. N. Moore, Deputy.

64 United States District Court for the Western District of Washington.

No. 3326.

In the Matter of the Application of TANG TUN and LEUNG KUM WUI for a Writ of Habeas Corpus.

Præcipe [for Transcript of Record].

To the Clerk of the Above-entitled Court:

You will please prepare and certify transcript of record on appeal in the above-entitled cause.

CHARLES T. HUTSON,
Ass't U. S. Att'y.

[Endorsed:] Præcipe. Filed in the U. S. District Court, Western Dist. of Washington. Jul- 30, 1908. R. M. Hopkins, Clerk. W. D. Covington, Deputy.

In the District Court of the United States for the Western District of Washington, Northern Division.

No. 3326.

In the Matter of the Application of TANG TUN and LEUNG KUM WUI for a Writ of Habeas Corpus.

Order [Directing Transmission of Original Exhibits to Circuit Court of Appeals].

Now, on this 5th day of August, 1908, upon motion of the United States Attorney, and for sufficient cause appearing, it is
65 ordered that the Clerk of this Court may separately certify and transmit to the Circuit Court of Appeals for the Ninth Circuit—there to be inspected and considered together with the transcript of the record upon appeal in this cause—the original exhibits introduced and used upon the trial of this cause, to wit Respondent's Exhibits, "A," "B," "C," "D," "E," "G," and "I."

C. H. HANFORD, *Judge.*

[Endorsed:] Order to Send up Original Exhibits. Filed in the U. S. District Court, Western District of Washington. Aug. 5, 1908. R. M. Hopkins, Clerk. A. N. Moore, Deputy.

In the District Court of the United States for the Western District of Washington, Northern Division.

No. 3326.

In re Application of TANG TUN and LEUNG KUN WUI for Writ of Habeas Corpus.

Bond.

Whereas, the above-named parties filed an application in the above-entitled court and cause for a writ of habeas corpus, which said writ was, after a hearing, granted by the Court and said petitioners discharged from custody; and

Whereas, the United States has appealed from said order of discharge to the Circuit Court of Appeals for the Ninth Circuit; and

66 Whereas, pending said appeal the above-entitled court has required the said petitioners to furnish a bail bond in the sum of $2,000 for their appearance in the above-entitled court in case said decree or order of discharge be reversed;

Now, therefore, know all men by these presents, that Tang Tun and Leung Kun Wui as principals, and J. M. E Atkinson and Woo Gen as sureties, are held and firmly bound unto the United States in the penal sum of $2,000, for the payment of which well and truly to be made they bind themselves, their heirs, executors and assigns, jointly and severally by these presents.

Sealed with their seals and dated this the 7th day of August, A. D. 1908.

The condition of the above obligation is such that if the above-named petitioners, Tang Tung and Leung Kun Wui, shall at all times render themselves and each of them amenable to the orders and processes of the above-entitled court, in case said decree of the above-entitled court be reversed by the Circuit Court of Appeals for the Ninth Circuit, and will appear for judgment in case it be ultimately determined that the said petitioners are not entitled to the issuance of a writ of habeas corpus, then this obligation to be void; otherwise to remain in full force and effect.

TANG TUN,
LEUNG KUN WUI,
By KERR & McCORD,
Their Attorneys.
J. M. E. ATKINSON.
WOO GEN.

67 STATE OF WASHINGTON,
County of King. ss:

J. M. E. Atkinson and Woo Gen, being first duly sworn, each for himself, deposes and says: That he is a resident of King County, Washington; that he is one of the sureties who executed the fore-

going bond; that he is worth the sum of $2,000 in statutory separa property situate in the State of Washington, over and above all h just debts and liabilities and in property not by law exempt from sa upon execution. That he is not an attorney nor counselor at la clerk of the Superior Court or other State, County or City official.

J. M. E. ATKINSON.
WOO GEN.

Subscribed and sworn to before me, this the 7th day of Augus A. D. 1908.

[SEAL.] LEROY V. NEWCOMB,
Notary Public in and for the State of Washington,
Residing at Seattle.

Approved:

C. H. HANFORD, *Judge.*

[Endorsed:] Bail Bond. Filed in the U. S. District Court, We ern Dist. of Washington. Aug. 8, 1908. R. M. Hopkins, Cler W. D. Covington, Deputy.

68 In the District Court of the United States for the Weste District of Washington, Northern Division.

No. 3326.

In the Matter of the Application of TANG TUN and LEUNG KU WUI for Writ of Habeas Corpus.

Clerk's Certificate [to Transcript of Record].

UNITED STATES OF AMERICA,
Western District of Washington, ss:

I, R. M. Hopkins, Clerk of the District Court of the United Stat for the Western District of Washington, do hereby certify the for going seventy-one (71) typewritten pages, numbered from 1 to 7 inclusive, to be a full, true and correct copy of the record and pr ceedings in the above and foregoing entitled cause, as the same r main of record and on file in the office of the Clerk of the said Cour and that the same, together with the original exhibits, separatel certified, constitute the record on appeal from the order and jud ment of the District Court of the United States for the Weste District of Washingon, to the Circuit Court of Appeals for the Nint Judicial Circuit.

I further certify that I hereto attach and herewith transmit th Original Citation issued in this cause.

I further certify that the cost of preparing and certifyin
69 the foregoing record on appeal is the sum of $48.50, and th the same will be included in my quarterly account for fe

against the United States for the quarter ending September 30, 1908.

In testimony whereof, I have hereunto set my hand and affixed my official seal at Seattle, in said District, this 11th day of August, 1908.

[SEAL.] R. M. HOPKINS, *Clerk*.

In the United States Circuit Court of Appeals for the Ninth Circuit.

No. 3326.

In the Matter of the Application of TANG TUN and LEUNG KUM WUI for a Writ of Habeus Corpus.

Citation [on Appeal—Original].

THE UNITED STATES OF AMERICA, *ss:*

To Tang Tun and Leung Kum Wui and to Messrs. Kerr & McCord, J. C. Whitlock and McCafferty & Godfrey, their Attorneys, Greeting:

You and each of you are hereby cited and admonished to be and appear before the United States Circuit Court of Appeals for the Ninth Circuit, at the city of San Francisco, in the State of California, within thirty days from the date of citation, pursuant to an appeal filed in the clerk's office of the United States District Court for the Western District of Washington, in a proceeding therein entitled "In the matter of the application of Tang Tun and Leung Kum Wui for a writ of habeus corpus," numbered 3326, and
70 show cause, if any there be, why the order and judgment of the United States District Court for the Western District of Washington, in said appeal mentioned, should not be reversed, set aside and held for naught, and why speedy justice should not be done in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 18th day of June, 1908.

[SEAL.] C. H. HANFORD,
United States District Judge, Presiding in said Western District of Washington.

We, Kerr & McCord, J. C. Whitlock and McCafferty & Godfrey, attorneys for the applicants, Tang Tun and Leung Kum Wei, named in the foregoing and above-entitled cause, on this 18 day of June, 1908, do hereby accept due, legal and personal service of this citation for and on behalf of said applicants, Tang Tun and Leung Kum Wui, at the city of Seattle, County of King, State of Washington, in the Western District of Washington.

J. C. WHITLOCK.
KERR & McCORD.
McCAFFERTY & GODFREY.

[Endorsed:] No. 3326. In the United States Circuit Court of Appeals for the Ninth Circuit. In the Matter of the Appli-
71 cation of Tang Tun and Leung Kum Wui for a writ of habeas corpus. Citation. Filed June 18, 1908. R. M. Hopkins, Clerk. By A. N. Moore, Deputy.

[Endorsed:] No. 1633. United States Circuit Court of Appeals for the Ninth Circuit. Harry Edsell, Chinese Inspector in Charge at the Port of Sumas, Washington, for the United States Government, Appellant, vs. Tang Tun and Leung Kum Wui, Appellees. In the Matter of the Application of Tang Tun and Leung Kum Wui for a Writ of Habeas Corpus. Transcript of Record. Upon Appeal from the United States District Court for the Western District of Washington, Northern Division. Filed August 15, 1908. F. D. Monckton, Clerk.

[*Clerk's Certificate to Original Exhibits.*]

In the District Court of the United States for the Western District of Washington, Northern Division.

No. 3326.

In the Matter of the Application of TANG TUN and LEUNG KUM WUI for a Writ of Habeas Corpus.

UNITED STATES OF AMERICA,
Western District of Washington, ss:

I, R. M. Hopkins, Clerk of the District Court of the United
72 States for the Western District of Washington, do hereby certify that the hereto attached sealed package contains the Original Exhibits "A," "B," "C," "D," "E," "G," and "I," introduced and used upon the trial of the above-entitled cause, which said exhibits I separately certify and transmit to the Circuit Court of Appeals, there to be inspected and considered together with the transcript of the record upon appeal certified of even date herewith, pursuant to the order of the Judge of the District Court, made and entered in said cause on the 5th day of August, 1908, a copy of which said order will be found on page 65 of the said transcript of the record upon appeal in this cause.

In Witness Whereof, I have hereunto set my hand and affixed the seal of the said District Court, at Seattle, in said District, this 11 day of August, 1908.

[SEAL.]

R. M. HOPKINS,
Clerk of said District Court.

[EXHIBIT "A."]

[*Certificate to Original Record from Bureau of Immigration on Appeal of Tang Tun et al.*]

DEPARTMENT OF COMMERCE AND LABOR,
WASHINGTON, *October* 19, 1906.

I hereby certify that the annexed is the original record upon which the appeal of Tang Tun and Leung Kum Wui was dis-
73 missed by the Department on September 6, 1906, taken from the files of the Bureau of Immigration.

F. P. SARGENT,
Commissioner-General of Immigration.
(Official Title.)
FHL.

OFFICE OF THE SECRETARY.

I hereby certify that F. P. Sargent, who signed the foregoing certificate, is now, and was at the time of signing, Commissioner-General of Immigration, and that full faith and credit should be given his certification as such.

In witness whereof, I have hereunto subscribed my name, and caused the seal of the Department of Commerce and Labor to be affixed, this 19th day of October, one thousand nine hundred and six.

[SEAL.] V. H. METCALF,
Secretary of Commerce and Labor.

[*Affidavit of S. F. Coombs and William B. Thompson.*]

Office of the Chief Clerk. Received Oct. 19, 1906. Dep't of Commerce and Labor.

STATE OF WASHINGTON,
County of King, ss:

S. F. Coombs and William B. Thompson, being first duly
74 sworn, on oath, each for himself, says: That he is a citizen of the United States and State of Washington, and has been a bona fide resident of Seattle, King County, State of Washington, for the last 45 and 34 years respectively; that he is acquainted with Tang Tun; that Tang Tun was born in Seattle, Washington, in the year, 1879, on old Third Avenue South over the store of Quong Lee Lung Company; that the photograph affixed to this affidavit is a correct likeness of said Tang Tun; that he knew Quong Lee, the father of Tang Tun; that Quong Lee was a merchant and member of the firm of Quong Lee Lung Company, doing business on Third Avenue South between Washington and Main streets, and lived over

said store with his family where Tang Tun was born in the year 1879. That sometime during the year, 1884, Tang Tun was taken to China by his parents, and remained there until the year 1897. On the 20th day of April, 1897, he was admitted into the United States by J. C. Saunders, Collector of Customs at Port Townsend, Washington, and has been a resident of Seattle ever since.

That Tang Tun desires to go to China for the purpose of getting married and bringing his wife to the United States, and this affidavit is made to enable him to do so.

S. F. COOMBS.
WILLIAM B. THOMPSON.

75

Identified and Deported Oct. 1, 1905, via Sumas, Wash.

[SEAL.] H. EDSELL,
Chinese Inspector in Charge.

Subscribed and sworn to before me this 26 day of September, 1905.

A. C. BOWMAN,
United States Commissioner.

[*Affidavit of Chin Quong.*]

STATE OF WASHINGTON,
County of King, ss:

Chin Quong, being first duly sworn, on oath, says: That he has been a bona fide resident of Seattle, King County, Washington, for over thirty years; that most of said time he has been engaged
76 in the mercantile business; that he is at the present time a member of the firm of Wa Chong Company, doing business at No. 406 Main Street, Seattle, Washington; that he is well acquainted with Tang Tun; that Tang Tun has been in business with Wa Chong Company since he returned from China, and for over a year last past has been a member of said firm; that he owns One Thousand Dollars of the capital of said Wa Chong Company.

That he desires to go to China for the purpose of getting married and bringing his wife to Seattle, and this affidavit is made to enable him to do so.

CHIN QUONG.

Subscribed and sworn to before me this 26th day of September, 1905.

[SEAL.] A. C. BOWMAN,
United States Commissioner.

[Endorsed:] No. 14610. Chinese 104. F. 371 S. #4317.

Office of Chinese Inspector in Charge.

PORT OF SUMAS, WASHINGTON, *June* 23, 1906.

A. S. No. 368.

In the Matter of the Application of TANG TUN to Land in the United States as Native-born Citizen of Seattle, Washington.

Examination of Applicant [(*Tang Tun*) *In re Application to Land—June* 23, 1906.]

Arrived on C. P. Ry. from Vancouver, B. C., June 22, 1906, having arrived at Vancouver, June 20, 1905, on the steamship "Empress of China."
77 Departed via Vancouver on the Steamship "E. of India," sailing from Vancouver on Oct. 1, 1905.

Age, 27 years. Height, 5 feet, 6 inches. Physical marks: Large pox-mark at outer corner right eye. Horizontal scar over right eyebrow; large pox-mark on each side of bridge of nose and one at left corner of eye, one at entrance of right nostril and one at each corner of mouth.

H. Edsell, Chinese Inspector in Charge.
Eng Chung, Interpreter,
Charles C. Crouch, Stenographer.

And the said applicant, being first duly sworn, on oath testified as follows:

[*Testimony of Tang Tun In re Application to Land—June 23, 1906.*]

Inspector EDSELL:

Q. What is your name?
A. Tang Tun.
Q. Have you any other name?
A. My married name is Kui Ngee.
Q. Do you blong to the Chin family?
A. Yes, sir.
Q. Is your name Chin Tang Tun?
A. They call it Chin Teong Tun.
Q. Write all of your names.

(陳祥燉) (趙宜

(Copied by Interpreter from shorthand notes.)

Q. Where were you born?
A. In Seattle on 3d Street, between Washington and Main.
Q. Do you mean 3d street as the streets are numbered now, or as they were formerly numbered?
78 A. As they were formerly numbered.
Q. What was the date of your birth?
A. 1879, the Chinese date was 10th month, 12th day. (November 25.)
Q. In what kind of a building were you born?
A. I was born in Quong Lee Lung's store, a wooden building.
Q. How many stories were in the building?
A. I was born in the second story, but I don't know how many stories there were.
Q. Who was the manager of the Quong Lee Lung Company?
A. My father.
Q. What was his name?
A. Quong Lee.
Q. Where is he now?
A. He is in China now; he is dead.
Q. Did you know any of his partners in the Quong Lee Co.?
A. No, sir; I was only five years of age when I went back to China.
Q. What was your mother's name?
A. Lew Shee.
Q. Where is she?
A. She is in China.
Q. Is she living?
A. Yes, sir.

Q. Where does she live?
A. She lives in Long Mee Village, Sun Ning District.
Q. Have you any brothers and sisters?
A. It seems to me that I had a sister who was born before I was, but I am not sure. She is dead.
Q. What was her name?
A. I don't know.
79 Q. Where was she born?
A. She was born in the same building I was in Seattle.
Q. Have you ever been to China before this trip?
A. This is the second trip.
Q. When did you go on your first trip?
A. I went home in 1884.
Q. Do you know the month and day and ship?
A. No, sir.
Q. Do you know from what port you departed?
A. I don't know anything about it.
Q. Who accompanied you?
A. My parents.
Q. How long were you in China on that trip?
A. A stayed there 13 years.
Q. Where did you live during those 13 years?
A. Lived in Long Mee Village.
Q. While you were living there during those 13 years did you see any Chinese from the United States?
A. Yes, I saw Chin Hock.
Q. Who is he?
A. He is in the Wa Chong Company. He lived in the same village that I lived in.
Q. Has he any other name?
A. Chin Ching Hock.
Q. Did he visit his home in that village during the time you were there?
A. I didn't go to his house, but I passed on the street and met him.
Q. Did you talk with him?
80 A. No, sir, but I knew he was back in China.
Q. How old were you when you saw him in China?
A. I think I was about 13 or 17, but I can't remember exactly.
Q. How long was Chin Ching Hock there?
A. I don't know how long.
Q. Is Chin Ching Hock the only Chinaman that you saw from the United States during that 13 years you lived in China?
A. Yes, sir.
Q. Does Chin Ching Hock's family still live in Long Mee?
A. They used to live there, but now they live in Canton.
Q. Did they move to Canton while you were living in Long Mee?
A. Yes, sir.
Q. How long before you came back to the United States did they move to Canton?

A. They moved to Canton quite a while before I came back here, but I don't know how many years.

Q. Were they still living in Long Mee when you saw Chin Ching Hock visiting there?

A. Yes, but he still has his house in Long Mee.

Q. Do you mean that Chin Ching Hock has a house in Long Mee now?

A. His son is living there and his son's wife, but his son is dead now, but his wife is living there.

Q. Which son is dead?

A. The biggest one.

81 Q. One of them that went back to China with him from here?

A. Yes, sir.

Q. What was his name?

A. Chin Lung Kui.

Q. When did you return to the United States from that trip?

A. In 1897.

Q. Where did you enter the United States?

A. I took the Northern Pacific ship and landed at Port Townsend.

Q. Do you know what ship you came on?

A. No, sir.

Q. Were you taken off the ship at Port Townsend for examination?

A. I have forgotten whether I landed at Port Townsend or Tacoma.

Q. By whom were you landed?

A. Mr. Saunders.

Q. What was his position?

A. He was the collector.

Q. Did he talk with you before acting on your case?

A. I forget it, but he examined me at Port Townsend.

Q. Where did he examine you at Port Townsend?

A. It was up in a building. I don't know whether it was the Courthouse or not as I was a stranger.

Q. What kind of a looking man is Mr. Saunders?

A. He isn't a very big man.

Q. Was he fleshy?

A. No, sir.

82 Q. Did he have a beard?

A. I have forgotten.

Q. What did he say to you?

A. I have forgotten.

Q. Were you taken before him the same day that you arrived at Port Townsend?

A. No, sir. I think they put me in the detention house and didn't examine me for two or three days.

Q. Did he examine anyone else concerning your case?

A. I don't know, sir.

Q. How long were you before him?
A. I forget it.
Q. Isn't it a fact that Mr. Saunders came on the ship at Port Townsend and accompanied the ship from Port Townsend to Tacoma and landed you when you arrived at Tacoma?
A. No, sir.
Q. Did Mr. Saunders admit you at once after he examined you at the custom house?
A. Yes, sir.
Q. Did he give you any paper?
A. Yes, sir.
Q. What kind of a paper?
A. Native-born paper.
Q. Where did he get it?
A. I think I brought that paper to him and he examined me and signed his signature and gave it back to me.
Q. Where did you get the paper?
A. It was my native-born paper.
Q. Well, where did you get it?
83 A. I got it in Seattle.
Q. When?
A. At the time I was in China I think we sent back here and got the paper in 1897 and that same year I came back here, but I am not sure.
Q. Was your father still living then?
A. No, sir.
Q. Did you send back and get the paper, or did someone send it to you from here without your asking for it?
A. I didn't have anything to do in China and so my mother wrote back to Chin Quong to fix me up a paper and send it back to me.
Q. Did Chin Quong write to you for photographs?
A. Yes, sir.
Q. Did you send them to him?
A. Yes, sir.
Q. What did the paper say?
A. It only said that I was born in Seattle at so and so.
Q. Who signed the paper?
A. Sam Coombs, William B. Thompson.
Q. The same men that are on the paper you have presented here?
A. Yes, sir.
Q. Didn't any Chinese sign it?
A. No, sir.
Q. Who got these witnesses to sign this paper for you?
A. Chin Quong knew these people knew I was born here and so he got them.
Q. How did Chin Quong know that these men knew that you were born in Seattle?
84 A. I think my mother wrote to Chin Quong and told him that these two men knew me and to have them sign their signatures.

Q. Who told you you were born in Seattle?
A. My mother.
Q. Do you remember anything yourself about having been there when you were a little boy?
A. No, sir.
Q. Did you ever see Chin Quong in China?
A. No, sir.
Q. When you were landed in the United States in 1897, what did you do?
A. I was in the Wa Chong Company's store.
Q. What did you do in their store?
A. I was clerk and salesman and everything.
Q. How much did they pay you a month?
A. First I got $10 a month, and then it was increased until I received $25.
Q. When did they give you $25 a month?
A. I think they increased it to $30. I worked for $25 a month for about a year, and then it was increased to $30, and then I worked for two or three years, and then went back to China.
Q. I understand you to say that you were receiving $30 a month for two or three years before you went back to China on this trip, is that right?
A. Yes, sir.
Q. Were you receiving $30 a month when you went to China?
A. Yes, when I get back they may give me $35.
85 Q. Do you expect to go to work for the Wa Chong Company when you get back to Seattle?
A. Yes, sir.
Q. And you think they may pay you $35 a month, do you?
A. I don't know.
Q. Have you any contract with the firm to employ you if you return?
A. I have no contract, but I have an interest in the Wa Chong Co.
Q How much of an interest?
A. $1,000.
Q. Where did you get that interest?
A. Chin Ching Hock gave me an interest in the company as a reward for good service.
Q. When did he give you the interest?
A. I think over two years ago.
Q. Can you tell me the exact date on which Chin Ching Hock gave you this interest?
A. No, sir; but I think the books will show it.
Q. You mean the books in the store?
A. Yes, sir.
Q. Can Chin Quong show that book?
A. Yes, sir.
Q. What are your duties in the store?
A. I do everything.
Q. How are you related to Chin Quong?

A. He is the same clan as I and he lived very close to where we live in China.

Q. Did you know Chin Quong before you came to the United States?

A. My mother knew him.

Q. Did you know him?

86 A. At the time I went back to China I saw him.

Q. At the time you went back to China on your first trip you mean you saw Chin Quong?

A. Yes, sir.

Q. Where did you see him?

A. In Seattle.

Q. Do you mean that you saw Chin Quong in Seattle before you left on the first trip to China when you were five or six years old?

A. Yes, sir, my mother told me so.

Q. How old were you when you came to the United States in 1897?

A. I was 18.

Q. Did you marry before you started from China on that trip?

A. No, sir.

Q. Are you married now?

A. Yes, sir.

Q. Where is your wife?

A. In the other room here.

Q. Where did you marry her and when?

A. In Long Mee Village, Sun Ning District, China, last year, 11th month and 4th day (November 30th).

Q. Under what kind of a ceremony were you married at Long Mee?

A. Chinese.

Q. Is that the only ceremony you had performed?

A. Yes, sir.

Q. What was your wife's name before she was married?

A. Leung Kum Wui.

Q. Where did she live?

A. Sah Tong Village, Sun Ning.

Q. How far is that from Long Mee?

A. About three miles.

87 Q. Did she come over to Long Mee to be married?

A. Yes, sir.

Q. Who accompanied her?

A. Chinese custom they go in kind of a sedan chair and men bring them over.

Q. Didn't her mother come with her?

A. No, sir.

Q. Didn't her father come with her?

A. No, sir. Only the go-between woman.

Q. Who was the go-between woman?

A. I don't know what her name is.

Q. What was the name of your wife's father?

A. Leung Teung Soon.
Q. What was his occupation?
A. He is a mason and builds brick houses.
Q. Has your wife any brothers and sisters?
A. Four or five brothers and three sisters.
Q. How long did you know your wife before you were married?
A. I didn't know her at all until my mother arranged the engagement.
Q. What was your marriage gift to your wife's mother?
A. I gave it to the go-between woman and I don't know whether she gave it to her mother or to her father.
Q. How much did you give the go-between woman?
A. $140 Mexican.
Q. How long did you stay in Long Mee after you were married?
88 A. I think about six or seven months.
Q. Where did you get these certificates (indicating certificates of marriage presented by the applicant)?
A. At the Canton China office. (Said certificates dated Canton, China and certifying that Tang Tun and Leung Kum Wui were married in the U. S. Consul-General's office by Rev. C. A. Nelson on May 21, 1906, bearing the seal of the U. S. Consulate-General and the signature of P. S. Heintzelman, Vice-Deputy Consul-General).
Q. Who gave them to you?
A. I got it at the American Consul's office there.
Q. How much did you pay for them?
A. $1.00 gold for both of them.
Q. Explain the circumstances under which they were issued?
A. I knew a fellow in Canton, Ah Lock, and he knew an American at Canton who taught the Chinese girls' school there and so I spoke to him. His name is Nelson. Then he saw the American Consul and spoke to him about my case and he gave me the paper.
Q. Did Rev. Nelson go to the Consulate with you?
A. Yes, sir.
Q. Did he perform and ceremony there?
A. Yes. I thought I would bring my wife over and I had no paper and so I saw the Consul and had him make a certificate certifying we were married in China, and so and so, and so he gave me the certificate.
89 Q. What was the ceremony that Rev. Nelson performed?
A. He praised God and so on and talked a few words. The American Consul was sitting there too, and so on.
Q. What were you doing in Seattle last year?
A. I couldn't tell exactly, but worked in the store sometimes and I was the driver sometimes. The Wa Chong Co. has a Chinese garden and sometimes I might drive something to the garden and then take something from the garden and sometimes if the store needed me I would go in the store and sell.
Q. Did you sometimes work in the garden?

A. Yes, sometimes.
Q. What did you do out there?
A. Just got some vegetables and all kinds of greens and drove around and sold them in Seattle.
Q. Does the Wa Chong Co. raise vegetables and sell them to the white people?
A. Yes, sir.
Q. Do the company's wagons go around and sell vegetables to white people's houses?
A. No, sir, not go around to the houses, just delivers them to the wholesale stores.
Q. How many men does the Wa Chong Co. employ in its gardens?
A. At the time I left there I think six or seven.
Q. Did you devote most of your time last year to looking after the garden and delivering vegetables?
A. Yes, sir, and sometimes I sold in the store too.
Q. Where did you sleep, at the store or at the garden?
A. At the garden.
90 Q. What time did you get up in the morning?
A. Four or five, and sometimes six.
Q. Did you gather onions and lettuce and radishes and potatoes to bring in to town with you?
A. Yes, and sometimes went and delivered to the Chinese stores too.
Q. What did you have to do in gathering the vegetables?
A. I told them to gather them up.
Q. Told who?
A. Told the fellows that worked in the garden to pick them up and pile them there in the morning and we would put them in the wagon and haul them to town.
Q. Did you help pull them up and pile them up?
A. No, sir.
Q. Did you help them load them?
A. Sometimes when I was in kind of a hurry.
Q. Were you the only man that did the driving?
A. Yes, but sometimes I would call another one.
Q. How many acres are in the garden?
A. Last year I think a little over ten acres.
Q. Did you make a delivery every day?
A. Yes, sir.
Q. When did you start in the spring?
A. It is hard to tell.
Q. About when?
A. I think about between fourth and fifth month.
Q. How late in the fall would you keep it up?
A. I think about 8th or 9th month.
Q. Didn't you sell potatoes later than that?
91 A. We didn't have any potatoes.
Q. Did you raise celery?
A. Yes, sir.
Q. Didn't you raise celery later than the 8th or 9th month?

A. Not very much.

Q. You delivered some things all winter, didn't you?

A. Yes, sir. If it rained very much we just dried them out and put them in the store.

Q. For how many years have you been looking after this work at the garden?

A. I think over three years.

Q. The last three or four years before you went to China on this trip?

A. Yes, sir.

I hereby certify that the foregoing is a true and correct report of the examination of the above-named Chinese applicant for admission to the United States, taken by me in shorthand notes and subsequently transcribed into typewriting as above set forth.

CHARLES C. CROUCH,
Chinese Inspector.

I hereby certify that I have read the foregoing transcript of examination and that the questions therein are correct as interpreted by me from English into Chinese to the applicant, and that
92 the answers therein are correct as by me interpreted from Chinese into English to the examining inspector.

ENG CHUNG,
Chinese Interpreter.

Re-examination of Tang Tun [In re Application to Land—June 27, 1906].

JUNE 27TH, 1906.

Inspector EDSELL:

Q. When you arrived at Port Townsend in April, 1897, Tang Tun, did you go from Victoria to Port Townsend on the same vessel on which you came from China to Victoria?

A. Yes, sir, the same boat.

Q. How long were you in Victoria before you came to Port Townsend?

A. Just took me up to the detention house and took a bath and so on.

Q. At Victoria?

A. Yes, sir.

Q. Was it just a few hours?

A. Just about a few hours.
Q. Were you taken to Vancouver?
A. No, sir.
Q. Were you put in the detention house at Port Townsend when you arrived there?
A. Yes, sir.
Q. Do you remember where the detention house was?
A. No, sir. I was a stranger there and don't know where it is.
Q. Did you have this paper (indicating Exhibit 1) to present the Collector at Port Townsend?
93 A. Yes, sir.
Q. How long after you were examined was it before you got the paper back?
A. After they examined me I took the boat to Seattle and he handed me the paper back.
Q. Do you mean that he handed you back the paper after you arrived at Seattle?
A. I think he handed me back the paper at Port Townsend before I went to Seattle?
Q. Who handed you the paper?
A. Saunders.
Q. Was anyone else present at that time?
A. One, the same as this one (indicating Inspector Crouch, reporting the examination).
Q. Was Chin Quong there?
A. No, sir, but I went up to Seattle with Chin Gee Hee. I don't know what he had been doing at Port Townsend.
Q. Had he come from China?
A. No, sir; he must have had some business to do in Port Townsend.
Q. Did your steamer go to Seattle or Tacoma?
A. To Tacoma. They examined me at Port Townsend and then transferred me to another steamer which took me to Seattle.
Q. You mean the steamer on which you originally came to Port Townsend went to Tacoma?
A. I don't know whether the boat went to Tacoma and then came back to Port Townsend or not.
Q. Did you leave the vessel on which you came from China at Tacoma or at Port Townsend?
94 A. At Port Townsend.
Q. Then after you were examined you took another boat, did you?
A. Yes, sir. I took another steamboat to Seattle.
Q. Then you didn't go to Tacoma at all, did you?
A. No, sir. It seems to me we passed there, but I don't remember.
Q. Do you remember what steamer you took from Port Townsend to Seattle?
A. No, sir.
Q. Did Chin Quong meet you when you got off the boat at Seattle?
A. Yes, sir.

Q. Isn't it true that he afterward got his paper and gave it to you (referring to Exhibit 1)?

(Witness hesitates.)

Q. Now, think about it.
A. I think so. I went up to Wa Chong's and he gave it to me.
Q. Did he gave it to you the same day that you got there?
A. I forget how long.
Q. Might it have been some days?
A. I think a few days.
Q. Did he go over to Port Townsend and get it?
A. I don't know anything about it.
Q. Who paid your fare from China to Seattle on that trip from which you returned in 1897?
A. Me.
Q. Did Chin Quong send you the money?
A. No, sir.
Q. How much did you owe Chin Quong or the Wa Chong Co. when you got to Seattle?
95 A. I didn't owe them anything.
Q. How much did you pay Chin Quong for getting you this paper?
A. I don't know what I paid; I forget.
Q. Was it quite a sum?
A. Just gave him for expenses for cigars; that was all.
Q. To whom were the cigars to be given?
A. Well, it was a favor for fixing that paper up and so I gave him the money for the cigars.
Q. How much do you think you gave him?
A. I forget.
Q. Why did you tell me the other day that you thought Mr. Saunders gave you this paper (Ex. 1)?
A. I forget. I thought he gave it to me, but when I thought about it, he sent it up to me at Seattle.
Q. Did he send it up or did Chin Quong go and get it?
A. I don't know whether he went down or whether he sent it up, but Chin Quong handed it to me in the store.
Q. You don't know who signed it then, do you?
A. No, sir, I don't know. (Long pause.) I think Saunders signed it.
Q. Why do you think so?
A. I just think so.
Q. Do you know Mr. Davis—Simon Davis?

(Applicant tries several times to pronounce name and after a long pause answers.)

A. No, sir.

96 [*Testimony of S. F. Coombs In re Application of Tang Tun to Land—July 2, 1906.*]

Department of Commerce and Labor,
Immigration Service.

OFFICE OF IMMIGRANT INSPECTOR IN CHARGE.
SEATTLE, WASH., *July* 2, 1906.

In the Matter of the Application of TANG TUN for Admission to the United States as a Returning Native-born Chinese.

Witness S. F. COOMBS called and sworn.

Q. What is your name?
A. S. F. Coombs.
Q. What is your business?
A. I am in the real estate business just now.
Q. How long have you been a resident of Seattle?
A. Upwards of 46 years.
Q. Do you know a Chinaman named Tang Tun?
A. Tun Tang was the name I knew him by when he was working for Wa Chong.
Q. How long have you known him?
A. The boy, I knew him when he was with his parents on old South 3rd St., where he was supposed to have been born. I knew him when he was just an infant.
Q. You say "supposed to have been born"; do you know if he was born there?
A. Only that he couldn't have been more than four or five days old when I saw him there; there was two children, a boy and a girl; the boy was the oldest.
Q. You say this boy was four or five days old when you first saw him?
97 A. Yes, about that, he was quite a young baby; the father took great pride in showing him off.
Q. In what year was it that you first saw him?
A. '79 or '80; somewhere along in there.
Q. Can't you be a little more exact in regard to the date?
A. It was in the summer time in '79.
Q. When was that girl, this boy's sister, that you spoke of, born?
A. That I can't say; my attention was not called to that.
—. How is it that you can remember the boy so well but not the girl?
A. I didn't pay any attention to her.
Q. You are sure the boy was the oldest?
A. I believe he was.
Q. You say you don't know about the girl because your attention was not called to her; who or what called your attention to the birth of the boy?

A. Well, it was just this way; about the time the riot was, I am not certain whether they asked me to sign the papers on which he came in the first time or not, he came in about 10 or 11 years ago.

Q. What was the name of the father of this boy?

A. Quong Lee; I forget the name of the firm he belonged to, but he was a merchant doing business on old 3d St.

Q. Whereabouts on old 3d St.?

A. Between Washington and Main Sts.

Q. On which side of 3d?

98 A. The right-hand side.

Q. The right-hand side might be either side, depending on the way you were facing; was it on the east or west side?

A. I am not certain which side it was on; I think it was on the right-hand side when you are going south.

Q. If it was on the right side when you are facing south it would be on the west side, would it not?

A. Yes, on the west side.

Q. What building stands there now?

A. I am not ce-tain what is there now.

Q. What was the building in which he was living, a one or two story?

A. I think it was two stories; the family lived upstairs, either upstairs or in the back part of the store; I don't remember which.

Q. What became of that family?

A. They went to China in '84 or '85.

Q. Did any of them ever return to this country?

A. The boy came back.

Q. Did the father ever come back?

A. I am not certain about the father comming back, but the boy did.

Q. When did the boy come back?

A. About 10 years ago.

Q. Do you know where he landed at that time?

A. He came by way of Port Townsend. I know that Saunders was the Collector at that time.

Q. Did you testify for him at that time?

99 A. I don't know, I am not certain about that; I know I testified for him when he went out.

Q. You say you testified for him when he went out; do you mean when he went out in 1884 or '85, or the last time?

A. I mean the last time, about ten months ago.

Q. Who did you testify before at that time?

A. I just made an affidavit.

Q. Were you examined by the Collector of Customs when the boy came here in 1897?

A. I don't know that I was.

Q. Do you know that you were not?

A. I don't know whether I was or not.

Q. How often did you see the boy that you say was born on 3d St. from the time you first saw him until the time you say he went to China in 1884 or '85?

A. Well, I was right in that store every week, twice a week. I kept pretty close tab on all the Chinamen.

Q. What was the nature of your business with the Chinamen at that time?

A. I was Wells-Fargo's agent, and about the time this boy was born I was police judge. I had my office on Washington St.

Q. Did you recognize this boy when he returned from China without any trouble?

A. No, but I was introduced to him in Wa Chong's store; they said "this is the boy that went away with his father and is back again." I was glad to see him.

100 Q. Then you would not have known him if some one had not introduced him to you and told you who he was?

A. I would not. I could not if my attention was not called to it.

Q. Then how do you know that he is the same boy that was born here?

A. I took their word that he was the same boy; I didn't pretend to have kept tab on a boy from four or five years old till he is a man.

Q. Then you are testifi-ng from what some one told you?

A. Yes, and what the boy told me himself.

Q. What did the boy tell you?

A. I don't remember that; he said he had come back here to go in business with Wa Chong, for about 9 years he had been in that store.

Q. Did he say anything about his birth?

A. No, I don't remember talking to him about his birth at all.

Q. Would you undertake to swear that this boy who is now applying for admission, and the boy who you say was born in 1879, are one and the same?

A. I have every reason to believe he is. I take it for granted that he is the boy for the reason that these men told me that he was.

Q. You say that he was connected with the Wa Chong Co.; what was the nature of his business there?

101 A. He was employed there; he was working in the store; he don't have to be a merchant; he came in once as a native-born.

Q. How do you know that he was admitted as a native-born?

A. I know he couldn't get here unles- he was.

Q. Couldn't he have come in here some other way?

A. I don't care to go into this any more. Judge Hanford would not allow any one to be questioned this way; when once I have told you what I know, you have no right to keep after me with questions.

Q. You said Tang Tun worked for the Wa Chong Co.; did he work in their store or on their ranch?

A. I have seen him in the store; he might have been on the ranch too, for all I know.

Q. Isn't it a fact that while he was here he was driving the wagon and selling vegetables and working on the ranch and not in the store?

A. I have told you once what I know about it, the ranch. I don't

know what you mean by the ranch; Wa Chong hasn't any ranch; he has a couple of farms or gardens, but no ranch.

Q. Would you know and recognize Tang Tun if you were to see him now?

A. Yes, I would.

Q. Is this his photograph? (Showing photograph of applicant.)

A. Yes.

Q. Do you recognize him as the boy who went away from here ten months ago, or as the boy that you say was born here in 1879?

102 A. As the boy who went away ten months ago, of course.

Q. Can you identify him as the boy who was born here in 1879?

A. I think we have been over that. I don't care to talk any more about it.

Q. How often have you been a witness in a Chinese case before?

A. I couldn't tell. I knew half the Chinese in Seattle.

Q. I show you a photograph and ask you if you know who it is?

(Showing photograph of Dong Hing Loy, attached to affidavit of Samuel F. Coombs, made February 15, 1906, stating that said Dong Hing Loy was born in Seattle, etc.)

A. I am not certain if I do or not. I don't know his name.

Q. Did you ever know a Chinese man or boy named Dong Hing Loy?

A. I might have, but they change their names so often I couldn't say.

Q. Did you ever know a Chinaman named Dong Key Pon? (Father of above-mentioned Dong Hing Loy.)

A. I think I remember the name; it seems familiar, but I can't place the man.

Q. Did you ever know a Chinaman named Dong Quong Ming? (The man handling the above-mentioned case.)

103 A. I may have but I can't place him.

Q. Is this your signature? (Showing signature on above-mentioned affidavit.)

A. I guess it is, but I don't remember signing Samuel F. before. I always sign S. F. Let me see; that affidavit was taken before Mr. Gay, wasn't it? O, yes, I remember now. (Witness takes a copy of said affidavit from his pocket and starts to read.) There was a Dong Hing Loy that I signed for.

Q. What do you know about him?

A. (Witness starts to read from affidavit.)

Q. I don't want you to testify from that paper, but from what you know.

A. If you think I am going to keep these cases running in my head you are mistaken. I have to refresh my memory before I can tell you anything about this boy.

Q. How did you refresh your memory when you signed that affidavit claiming to know all about this boy and his family?

A. Mr. Gay asked me questions; his questions brought it back to me and I answered them.

Q. Mr. Coombs, that is just what I am doing, and want to do. I wish to ask you questions and have you answer them.

A. That is just what I won't do. I won't answer any more questions. You know I don't get very much pay in these cases, only $2.50 a case.

Q. Then it is because you have not received your fee in this case that you refuse to testify, is it?

104 A. Well, that and other reasons.

——— ———.

Subscribed and sworn to before me this — day of July, 1906.

——— ———,
Immigrant Inspector.

Witness, after reading over the above statement, refused to sign statement unless the last two pages were taken off; he admitted that he said what is shown therein, but claimed that it had nothing to do with the case in question.

I certify the above is a true and full transcript of the notes made by me at the time of examination; witness was sworn by me before making statement.

THOS. M. FISHER, JR.,
Immigrant Inspector.

[*Testimony of W. B. Thompson In re Application of Tang Tun to Land—July* 2, 1906.]

Department of Commerce and Labor,
Immigration Service.

OFFICE OF IMMIGRANT INSPECTOR IN CHARGE,
SEATTLE, WASH., *July* 2, 1906.

In the Matter of the Application of TANG TUN for Admission to the United States as a Returning Native-born Chinese.

Witness WM. B. THOMPSON called and sworn.

Q. What is your name?
A. William B. Thompson.
Q. What is your business?
A. Police officer.
105 Q. How long have you been a resident of Seattle?
A. Since 1872.
Q. Do you know a Chinaman named Tang Tun?
A. Yes.
Q. How long have you known him?
A. Well, I remember about the time he was born; it was in either

'78 or '79. I was in the truck and dray business at the time and did the hauling for his father; there were two children.

Q. Were was this boy, Tang Tun, born?

A. He was born on 3d St.—it is now 2d south—between Washington and Main; it was right close to Washington; the father kept a store there.

Q. On which side of 3d St. was it?

A. On the west side.

Q. How old was the boy when you first saw him?

A. Probably two or three years old when I first knew him; he and the little girl were around the store.

Q. Was the girl you speak of a sister of the boy?

A. Yes.

Q. Was she older or younger than the boy?

A. I think she was younger; they were about the same size, but I am sure she was the younger.

Q. What kind of a building was that in which they lived?

A. It was a one-story building.

Q. What became of that family?

A. The father and both children went back to China.

Q. Did the mother go too?

A. I think so.

Q. When did they go to China?

106 A. It was in 1878 or '79, as near as I can remember.

Q. How old was this boy, Tang Tun, at that time?

A. I should judge he was about six years old.

Q. Did any of that family ever return to this country?

A. Yes, the boy came back.

Q. Did the father come back?

A. No.

Q. When did the boy come back?

A. In 1897.

Q. Did you testify for him at that time?

A. Yes.

Q. Before whom?

A. I don't remember; it was in Seattle, though.

Q. Was the boy admitted at that time?

A. Yes.

Q. Is this the boy who was admitted?

A. Yes.

Q. Is this the same boy who was born in Seattle, and who you knew?

A. To the best of my belief it is.

Q. Will you swear it is the same boy?

A. Yes, I will.

Q. What has this boy been doing since he came from China in 1897?

A. He was with Wa Chong in the store.

Q. Was he working in the store or on their farm?

A. He was in the store every time I saw him.

Q. How often did you see him from the time you first saw him until he went to China, which you say was in 1878 or '79?

107 A. Once or twice a week.

Q. Are you testifying from your own knowledge in this case, or from what some one has told you?

A. From my own knowledge.

Q. How many times have you been a witness in a Chinese case before?

A. A few times; perhaps a dozen in the last twenty years.

(*Signed*) WILLIAM B. THOMPSON.

I certify the above is a true and full transcript of the notes made by me at the time of examination; said notes being subscribed by a witness who was sworn by me before making statement.

THOS. M. FISHER, JR.,
Immigrant Inspector.

[*Report of Chinese Inspector, Dated July 3, 1906, In re Application of Tang Tun to Land.*]

JULY 3, 1906.

Wm. B. Estell, Immigrant Inspector in Charge, Seattle, Wash.

SIR: I enclose herewith application of Tang Tun for admission to the United States as a returning native-born Chinese together with testimony taken by me in my examination of the same.

Chin Quong, one of the parties who signed an affidavit for the applicant, was notified by me to appear at this office and give his testimony in this case, he informed me that he did not care to testify; in the testimony of Mr. Thompson he says that this boy, Tang Tun, was born in either 1878 or '79; that the boy was probably two

108 or three years old when he first saw him. A little later he said that the family went back to China in 1878 or '79, and that the boy was about six years old at that time.

The testimony of the other witness, S. F. Coombs, shows, in my opinion, that he knows absolutely nothing about the birth of this boy. He says that when he saw Tang Tun some nine or ten years ago he did not recognize him as the boy which he claims was born in this city, and that he took some one's word for it, that they were one and the same. In order to test Mr. Coombs' memory, etc., I showed him a photograph of one Dong Hing Loy, now applying for admission at San Francisco, and in *who's* case Mr. Coombs made an affidavit in this city February 15th of this year, stating that he knew the boy well and that he was born here, etc. Mr. Coombs was not expecting to be asked in regard to that case, and could not identify the boy, nor did he know anything about him; he finally refused to answer any more questions and went away angry at me for asking so many questions.

The applicant claims that he is a member of the Wa Chong Co. This may be true, but for the past three or four years, to my per-

sonal knowledge, he has been in charge of, and working on, the ranch owned by that company. I have visited that ranch a large number of times, and have seen this man there and have been shown by him the room in which he said he lived.

109 In view of the testimony submitted in this case I would respectfully recommend that the applicant be denied the admission he seeks.

Respectfully, THOS. M. FISHER, JR.,
Chinese Inspector.

Further Examination of Tang Tun [In re Application to Land—July 5, 1906.]

OFFICE OF CHINESE INSPECTOR IN CHARGE,
PORT OF SUMAS, WASHINGTON, *July 5*, 1906.

Inspector EDSELL:

Q. Tang Tun, can you explain to me why the records at Port Townsend should show that you were rejected in May, 1897, when you claim that you were admitted in April, 1897?

A. I was examined and Saunders admitted me, but I don't know how he put it on the paper. I don't see how there could be two papers with his signature on, the one admitted and the other rejected.

Q. Mr. Coombs and Mr. Thompson have been examined in your case, and their testimony is not satisfactory. Can you furnish any additional testimony as to your nativity?

A. I was too small and only my mother knows it.

Q. Don't you know anybody in the United States besides Mr. Coombs and Mr. Thompson who knows the facts concerning your birth?

A. Do you want Chinese or white people?

Q. I would prefer white people.

110 A. I was too small, and don't know anybody. I might have known some one, but now it has been so long that I don't remember them now.

Q. You told me that you believed you once had a sister. Was that sister born before you or after you?

A. She was younger. (After a pause.) I don't know how it comes, but I think she was older than me. She was born before I was, but I am not sure.

Q. How long did she live?

A. I don't know. Some one told me, but I don't know myself.

Q. Who told you?

A. I forget.

[*Order of Chinese Inspector Denying Tang Tun Admission to the United States.*]

Order Rejecting Applicant.

The applicant presented at the time of his arrival at this port an identification paper setting forth that he had been admitted at Port Townsend, Washington, on April 20, 1897, as a native-born citizen of the United States. He subsequently secured from Chin Quong, the manager of the Wa Chong Co., of Seattle, Washington, a copy of the identification papers on which the said admission was alleged to have been granted—the said copy bearing the following indorsement over the alleged signature of J. C. Saunders, Collector: "Arrived at Tacoma Washington, April 10th, '97, on Str. 'Tacoma,' from China, and admitted April 20/97." The applicant at first stated that this indorsement had been placed on his paper at
111 the time of his admission, Collector Saunders having written it in his presence and handed the paper back to him. He afterward testified, however, that he was mistaken in that statement, having recalled that he did not get the said indorsed paper until some time after his admission, when it was secured for him and *and* given to him in the Wa Chong store by Chin Quong, the manager of the said store, who had arranged for his coming to the United States.

The records of the Port Townsend office contain the original of the indorsed paper secured by the applicant from the Wa Chong store, and such original bears the following indorsement: "Rejected May 25/97, J. C. Saunders, Collector." This indorsement is supported by the other records of the Port Townsend office under case No. 12,343.

It is a matter of record that another Chinaman and alleged native-born citizen of the United States who was rejected at the same time by the Port Townsend office, having arrived on the same ship with the applicant herein, was subsequently found in the store of the Wa Chong Co., was arrested, and after due hearing of his case before the courts was ordered deported to China, and was so deported. Further, it is a matter of record that a number of other Chinese were arrested at the same time as the deported Chinaman above mentioned, all having been found in the Wa Chong store, and all having been in possession of "native-born citizen" papers bearing the alleged indorsement of Collector J. C. Saunders. Each was given due
112 hearing before the proper courts, and each was deported to China by order of the Court on a finding that the records of the Port Townsend office did not show the landing claimed.

With a desire to treat the applicant justly, he has been given an opportunity to prove his claim of nativity, but has failed to furnish evidence which under the circumstances would justify his admission as a citizen of the United States.

There appears in his application intimation that the applicant might make a claim that he had been a domiciled merchant in the

United States. His own testimony as to his occupation prior to departure shows that during the three years immediately preceding his departure he was engaged chiefly as the driver of a wagon between the Wa Chong gardens and the wholesale houses of Seattle delivering vegetables and making his home at the gardens.

The applicant is therefore denied admission on the grounds.

First. That his status has already been adjudicated by officers duly charged with the enforcement of the Chinese exclusion laws:

Second. Though given an opportunity to show that injustice may have been done by the former finding in his case, the applicant has failed to furnish any evidence to support such a conclusion:

Third. The applicant has not furnished sufficient evidence of any status by which he is entitled to admission to the United States.

H. EDSELL,
Chinese Inspector in Charge.

113 [*Notice of Decision Denying Tang Tun Admission to the United States.*]

Department of Commerce and Labor, Immigration Service.

No. 368. Arrived June 22, 1906.

OFFICE OF CHINESE INSPECTOR IN CHARGE,
SUMAS, WASHINGTON, (Date) *July* 5, 1906.

Mr. Tang Tun.

SIR: You are hereby notified that after due consideration of your case you have been denied admission to the United States. This decision is not final; if you desire to avail yourself of the right of appeal to the Honorable Secretary of Commerce & Labor at Washington, through an attorney or responsible representative. You may communicate with such representative, or your friends, either by letters or telegrams sent through this office, but your written notice of appeal must be filed within two days. Your signature and acknowledgment of the foregoing is requested.

Respectfully,
H. EDSELL,
Chinese Inspector in Charge.

The foregoing interpreted to the applicant by me as official interpreter.

ENG CHUNG,
Chinese Interpreter.

(Date) July 5, 1906.

(Acknowledged.)
TANG TUN, *Applicant.*

114 [*Letter, Dated July* 6, 1906, *from H. Edsell to W. B. Estell.*]

Department of Commerce and Labor, Immigration Service.

Nos. 909 and 913.

OFFICE OF CHINESE INSPECTOR IN CHARGE,
SUMAS, WASH., *July* 6, 1906.

W. B. Estell, Inspector in Charge, Seattle, Washington.

SIR: I beg to acknowledge receipt of your letter of July 3, 1906, #2109, returning the papers in the cases of Tang Tun and Leung Kum Wui, applicants for admission to the United States as returning native-born citizen and wife, respectively, together with the testimony taken by Chinese Inspector Fisher, Jr., and his report thereon. Please express to Inspector Fisher my appreciataion of his thorough examination of the witness Samuel Coombs, and advise him that the results he secured will be a valuable support for the action I have taken rejecting both applicants.

The applicant Tang Tun immediately telegraphed Chin Quong requesting him to employ an attorney, and in anticipation of an appeal, which will probably follow, I respectfully request that you furnish me, if possible, with a copy of the affidavit filed in your office against Attorney J. C. Whitlock by some white witness whom he had employed for use in a Chinese case. Any other information or exhibits which you can furnish concerning Mr. Whitlock's
115 alleged connection with "Saunders" papers will be appreciated.

Respectfully,

(Signed) H. EDSELL,
CCC. *Chinese Inspector in Charge.*

(Copy respectfully mailed Port Townsend office.)

[*Letter, Dated July* 7, 1906, *from J. C. Whitlock to Harry Edsell.*]

SEATTLE, WASHINGTON, *July* 7, '06.

Harry Edsell, Esq., Sumas, Wash.

DEAR SIR: I enclose you herewith notice of appeal from your decision in the case of United States vs. Tang Tun to the Department at Washington. I intend to take additional testimony and will endeavor to get it within the five days, but it all depends upon how soon I can get the paper now in your possession. The affidavit was made several years ago to the effect that Tang Tun was a native-born of Seatlle and on that affidavit he was admitted into the United States by J. C. Saunders, Collector of Customs at Port Townsend on the 20th day of April, 1897, and it is endorsed in red ink across the face of such paper to that effect. I desire that paper to refresh the memory of the person who wrote it.

I will return it to you with the testimony taken.
Thanking you in advance, for such paper, I am,
Yours very truly,

J. C. WHITLOCK.

[Endorsed:] Received Jul- 10, 1906. Immigration Service, Sumas, Wash.

116 [*Notice of Tang Tun of Appeal to Secretary of Department of Commerce and Labor.*]

Harry Edsell, Inspector in Charge, Sumas, Wash.

DEAR SIR:

* * * * * * *

UNITED STATES
vs.
TANG TUNG.

Notice of Appeal.

To Harry Edsell, Inspector in Charge, Department of Commerce and Labor, Sumas, Washington:

Take notice that Tang Tun fe/ling aggre*i*ved at the decision rendered by you on the 5th day of July, 19*P6*, refusing to admit him into the United States, hereby appeals from said decision to the Secretary of the Department of Commerce and Labor at Washington, D. C.

J. C. WHITLOCK,
Att'y for Tang Tun.

[Endorsed:] Received Jul- 10, 1906. Immigration Service, Sumas, Wash.

[*Letter, Dated July* 9, 1906, *from J. C. Whitlock to Harry Edsell.*]

SEATTLE, WASHINGTON, *July 9th,* 1906.

Harry Edsell, Esq., Sumas, Wash.

DEAR SIR: I find that it will be impossible for me to take the additional testimony necessary in the case of the United States versus Tang Tun within the five days allowed, and therefore ask
117 for an extension of time to take said testimony until the 20th day of July, 1906.

I wrote you Saturday asking that you send me an affidavit made in 1897, on which Tang Tun was admitted into the United States, by J. C. Saunders, Collector of Customs, at Port Townsend, Washington.

It is absolutely necessary that I have that paper in order to intelligently present the facts of the case on the part of Tang Tun. I do not understand that that affidavit belongs to your files in the case, but in the event I am in error, will return the same to you soon as testimony is taken.

Again thanking you for said affidavit,

I am, yours truly,

J. C. WHITLOCK.

[Endorsed:] Received Jul- 10, 1906. Immigration Service, Sumas, Wash.

[*Letter, Dated July* 9, 1906, *from H. Edsell to J. C. Whitlock.*]

Nos. 909 and 913.

JULY 9, 1906.

J. C. Whitlock, Attorney at Law, Seattle, Washington.

SIR: With reference to our telephonic conversation on July 6, 1906, wherein you served upon me a verbal notice of appeal in the cases of Tang Tun and Leung Kum Wui, alleged native-born citizen of Seattle, and wife, respectively, I beg to call your attention to the fact that the written notice which you promises to forward
118 me on Saturday has not yet arrived, nor have I received any formal written request for the additional time which you stated was necessary for the proper presentation of your clients' cases. I desire to give you every opportunity to prove the merit of the cases you represent, but must insist that the routine requirements be observed, as otherwise the records would go to the Department in an incomplete condition. Kindly forward at once the formal notice and request referred to.

Respectfully,

(Signed) H. EDSELL,

CCC. *Chinese Inspector in Charge.*

[*Letter Dated July* 11, 1906, *from H. Edsell to W. B. Estell.*]

Department of Commerce and Labor, Immigration Service.

No. 909.

OFFICE OF CHINESE INSPECTOR IN CHARGE,
SUMAS, WASH., *July* 11, 1906.

W. B. Estell, Inspector in Charge, Seattle, Washington.

SIR: I beg to inclose herewith the paper on which Tang Tun, now an appellant at this port from my decision denying him admission to the United States as a native-born citizen of the United States, is alleged to have been admitted to the United States at Port Townsend in April, 1897. This paper is forwarded to your office at

the request of the applicant's attorney and on his statement that he desired to exhibit it to a witness in order that the said witness
119 could identify it in some manner. I have advised the said attorney—J. C. Whitlock—that he would not be permitted to remove the said paper from the custody of officers of this Service, but that he would be permitted to see the paper in your presence and to exhibit it to his witness.

The witness he spoke of over long-distance telephone yesterday morning was one Walter Bowen, who, I believe, was at one time employed in the office of Collector J. C. Saunders in the capacity of chief clerk, special deputy collector, or some similar position. I anticipate, therefore, that it is the attorney's intention to try by Mr. Bowen to establish the genuineness of Mr. Saunders' signature. If on receipt of Mr. Bowen's testimony or affidavit, I find that my expectation is realized, I will return the papers to you for examination of Mr. Bowen as to the signature of Mr. Saunders on certain other documents in my possession.

In this connection I beg to acknowledge receipt of your letter of July 9, 1906, #2109, advising me that you are endeavoring to locate the affidavit of some white witness as to Attorney Whitlock's connection with alleged "Saunders" papers. I am glad that you are making careful search, as I believe the said affidavit will prove a valuable exhibit in the Government's case.

Respectfully,

(Signed) H. EDSELL,

CCC. *Chinese Inspector in Charge.*

120 [*Letter Dated July* 11, 1906, *from H. Edsell to J. C. Whitlock.*]

Department of Commerce and Labor, Immigration Service.

No. 909.

OFFICE OF CHINESE INSPECTOR IN CHARGE,
SUMAS, WASH., *July* 11, 1906.

J. C. Whitlock, Attorney at Law, Seattle, Washington.

SIR: In compliance with your request over long-distance telephone of yesterday morning, I am forwarding to Inspector in Charge Estell, Seattle, the paper on which your client Tang Tun is alleged to have been landed at Port Townsend, Washington, in April, 1897, as a native-born citizen. This action is taken in order that you may exhibit the said paper to a witness in behalf of your client, but you will not be permitted to remove the said paper from the custody of the officers of this Service.

In preparing your affidavits and other documents incident to prosecution of this appeal, I will appreciate it if you will submit them in duplicate so that one copy may remain on file in this office and the other be forwarded to the Secretary of Commerce and Labor.

On the strength of your assurance in our telephonic conversation of yesterday morning that you would need until July 20th to complete the showing you desire to make in behalf of your
121 clients, I have granted you until that date to perfect your appeals.

Respectfully,

(Signed) H. EDSELL,
CCC. *Chinese Inspector in Charge.*

[*Letter Dated July* 11, 1906, *from S. H. Hamer to W. B. Estell.*]

(Copy.)

Department of Commerce and Labor,
Immigration Service.

OFFICE OF INSPECTOR IN CHARGE,
PORT ANGELES, WASH., *July* 11, 1906.

W. B. Estell, Im. Insp. in Charge, Seattle, Wash.

SIR: Replying to your letter No. 2109, of the 10th instant, I beg to state that: during the last days of Oct., 1904, I obtained some information relative to the methods used by Mr. Whitlock.

Mr. Whitlock, attorney for Tin Fon or Fong, an alleged native-born Chinaman then in China, gave Bill Morris, expressman, and ex-policeman $20 to obtain two witnesses to an affidavit that Tin Fon was born at Renton some 22 years ago.

Morris secured as witnesses one G. F. Smith and a Mr. Llewellyn.

G. F. Smith was at one time the proprietor of a tenderloin saloon and doubtless had no compunction about signing an affidavit of any kind; but Llewellyn, who was under the influence of liquor when he signed the affidavit and accepted the $5.00 and as soon as
122 he came to himself, went to the Clerk of the Court and made a statement covering the facts in the case, so he stated to me. I never verified the statement.

Llewellyn lived on the cor. of Washington St. and 5th Ave. So. with a friend whose name I cannot remember.

If Llewellyn can be found he will give any information in his possession.

The man Llewellyn was rooming with was also approached and asked to sign the affidavit.

Bill Morris' team usually stands in front of a saloon on the N. E. Cor. of Washington St. and Second Ave. So.

I am under the impression that I wrote a report of the case at that time.

I trust this information may be sufficient to serve your purpose.

Respectfully,

(Signed) S. H. HAMER,
Im. Insp.

[Endorsed:] Received Jul- 27, 1906. Immigration Service, Sumas, Wash.

[*Letter Dated July* 21, 1906, *from J. J. Godfrey to H. Edsell.*]

SEATTLE, *July* 21, 1906.

Mr. H. Edsell, Chinese Inspector in Charge, Sumas, Wash.

DEAR SIR: I wish to say in regard to the Tan Tung case that Mr. John C. Whitlock is attorney of record in this case and as I have only been taken into the case recently I find it impossible to
123 go through such a voluminous record and complete brief before Tuesday the 24th day of July. I wish therefore that you would enter an order of record extending the time until that date.

Yours truly, JAMES J. GODFREY.

[Endorsed:] Received Jul- 23, 1906. Immigration Service. Sumas, Wash.

[*Letter Dated July* 24, 1906, *from J. J. Godfrey to Harry Edsell.*]

JULY 24, 1906.

Hon. Harry Edsell, Chinese Inspector in Charge, Sumas, Wash.

DEAR SIR: As you know the record in the Tan Tung and Lung Kum Wui cases is at the present time in very unsatisfactory shape; Mr. Whitlock, who is attorney of record in this case, has seen fit to supplement the original record by the addition thereto of affidavits of C. W. Chamberlain, Walter Bowen, S. A. Brinker, J. C. Whitlock, Chin Quong, Robert Fitzhenry, and Walter Burritt, and copies of the same for your files. I consider that the writing of a brief at this time would be an error, as the reference I have made previously to the condition of the record, would make it foolish for me to endeavor to brief the question at this time, more particularly in view of the fact that the Secretary will insist upon an investigation's being had on these new affidavits, before he will pass upon the merits of the case. Consequently I think it would be much better to
124 have the completed record before I endeavor to write a brief. than it would be to endeavor to argue the case piecemeal.

When the investigation is had, I would ask that you instruct Mr. Crouch to send me a copy of the new testimony, in order that I may take up the whole case in an intelligent manner. Please enter an order of record staying the filing of the brief until such time as the new examination is had.

Respectfully, JAMES J. GODFREY.

[Endorsed:] Received Jul- 25, 1906. Immigration Service. Sumas, Wash.

[*Affidavit of Chin Quong, Dated July* 17, 1906.]

STATE OF WASHINGTON,
County of King, ss:

Chin Quong, being first duly sworn, on oath, says: That he has been a resident of Seattle, Washington, for over thirty years; that he has been engaged in the mercantile business the most of said time; that he is at the present time a member of the firm of Wa Chong Company, doing business at No. 406, Main Street, Seattle, Washington, and has been manager of said firm for many years; that he is well acquainted with Tang Tun and has known him for a long time; that said Tang Tun is a member of the firm of Wa Chong Company, and has been a member of said firm for over two years last past; that prior to becoming a member of said firm Tang Tun was employed by said firm as a clerk in its store and driver
125 of its delivery wagon, delivering goods to all parts of the city of Seattle and for shipment to points outside the city; that said firm of Wa Chong Company owns a farm in South Seattle, King County, Washington, which it cultivates in connection with its store, and has a warehouse on said farm, in which a large amount of goods are stored at all times, and maintains a stable on said farm for the care of its horses; that said Tang Tun has been, for some years, in charge and had the management of said farm, warehouse and stable, and when not engaged in delivering goods from the store, as aforesaid, has been engaged in and about the management of said farm and warehouse; that a large amount of vegitables are raised on said farm which are sold to commission men in and about the City of Seattle, and from said Wa Chong Company's store.

CHIN QUONG.

Subscribed and sworn to before me this 17th day of July, 1906.
[SEAL.] J. R. POLAND,
Notary Public for the State of Washington,
Residing at Seattle, Washington.

[Endorsed:] Received Jul- 25, 1906. Immigration Service, Sumas, Wash.

126 [*Affidavit of Walter Bowen, Dated July* 14, 1906.]

UNITED STATES OF AMERICA
vs.
TANG TUN and LEUNG KUM WUI.

STATE OF WASHINGTON,
County of King, ss:

Walter Bowen, being first duly sworn, on oath, says: That he is a citizen of the United States and State of Washington; that he was

a special Deputy under J. C. Saunders, Collector of Customs, for the District of Washington from some time during the year 1893, until the month of September, 1897, and was in control of the office at Port Townsend in the absence of said Collector J. C. Saunders.

That he saw the said J. C. Saunders write his name many times, and is perfectly familiar and acquainted with his handwriting; that the name of J. C. Saunders written in red ink across the face of an affidavit made by Simon Davis and William B. Thompson on the 4th day of November, 1896, to the effect that Tang Tun was born in the city of Seattle, Washington, is the handwriting of said J. C. Saunders.

That during the term of office of said J. C. Saunders, which terminated in the month of September, 1897, the United States Government nor any one in its behalf, owned, kept or control-ed a house of detention in which Chinamen were imprisoned during the time their right to enter the United States was being investi-
127 gated by said Collector of Customs, and that during said investigation said Chinese were not allowed to leave the steamer in which they came from China until after a decision allowing them to enter the United States had been made. If the decision was adverse to their admission they were returned to China on the same steamer in which they came.

That at no time during this incumbency of office does he recollect of a steamer remaining in any port from the 10th day of April till the 25th day of May, following.

That the steamers engaged in that kind of traffic usually remained in the ports of Puget Sound about 10 or 12 days.

That said J. C. Saunders always examined Chinese persons landing at Tacoma personally, and never allowed any subordinate to attend to that part of his duties, except his Special Deputy.

WALTER BOWEN.

Subscribed and sworn to before me this 14th day of July, 1906.
[SEAL.] A. S. NICKERSON,
Notary Public for Washington,
Residing at Seattle.

[Endorsed:] Received Jul- 25, 1906. Immigration Service, Sumas, Wash.

128 [*Affidavit of S. A. Brinker. Dated July* 16, 1906.]

UNITED STATES OF AMERICA
vs.
TANG TUN and LEUNG KUM WUI.

STATE OF WASHINGTON,
County of King, ss:

S. A. Brinker, being first duly sworn, on oath, says: That he is a citizen of the United States and the State of Washington; that he was an Inspector of Customs under J. C. Saunders, Collector of Customs

for the District of Washington at Port Townsend during the whole of his term of office, which terminated in the month of September, 1897, and as such inspector saw J. C. Saunders, write his name many times; that he has received letters from him since the said Saunders' term of office expired, and is well acquainted with his handwriting.

That he has examined the signature of said J. C. Saunders, written in red ink across the face of an affidavit made and executed by Simon Davis and William B. Thompson on the 4th day of November, 1896, before T. H. Cann, Notary Public, to the effect that Tang Tun was born in the city of Seattle, Washington, and the same is the handwriting of said J. C. Saunders.

That during the term of office of the said J. C. Saunders, which terminated in September, 1897, the United States Government, nor any one in its behalf, owned, kept or control-ed a house of
129 detention in which Chinamen were imprisoned during the time their right to enter the United States was being investigated by said Collector of Customs, and that during said investigation said Chinamen were not allowed to leave the steamer on which they came from China until after a decision allowing them to enter the United States had been made and rendered. If the decision was adverse to their admission they were returned to China on the same steamer on which they came.

That the said J. C. Saunders always examined all Chinese landing at Tacoma personally, and allowed no one else to perform that duty for him, except his Special Deputy. That he at no time during his incumbancy of office as Inspector of Customs does not remember of a steamer bringing Chinese from the Empire of China to this country ever remaining at any port in Puget Sound for a length of time greater than 15 days before returning, during the whole of his term as Inspector of Customs.

S. A. BRINKER.

Subscribed and sworn to before me this 16th day of July, 1906.
[SEAL.] JOHN P. HANSMAN,
Notary Public for Washington, Residing at Seattle.

[Endorsed:] Received Jul- 25, 1906. Immigration Service, Sumas, Wash.

130 [*Affidavit of W. Burritt, Dated July* 17, 1906.]

STATE OF WASHINGTON,
County of King, ss:

Walter Burritt, being first duly sworn, on oath, says: That he is a citizen of the United States and the State of Washington, and has been a resident of Seattle, King County, for the last thirty-three years; that during the year 1879 he lived on the west side of South Third Street (now Second Avenue South), between Jackson and Main Street; that he knew Quong Lee, a Chinaman, who lived just

across the street from affiant; that Quong Lee was a merchant and lived in his store on the west side of South Third Street between Washington and Main Street, where a son was born to him and wife; that the boy was named Tang Tun; that he saw the boy a great many times in his father's arms and Quong Lee, the father, told him that he was his son.

That Quong Lee and wife went to China about the year 1884 and took Tang Tun and a sister with them; that he has seen Tang Tun many times since his return to the United States at the store of Wa Chong Company, Seattle, Washington, and believes that he is the same Tang Tun that was born to Quong Lee and wife on South Third Street, Seattle, in the year 1879.

W. BURRITT.

131 Subscribed and sworn to before me this 17th day of July, 1906.

[SEAL.] J. R. POLAND,
Notary Public for the State of Washington,
Residing at Seattle, Washington.

[Endorsed:] Received Jul- 25, 1906. Immigration Service. Sumas, Wash.

[*Affidavit of Robert Fitzhenry, Dated July* 16, 1906.]

STATE OF WASHINGTON,
County of King, ss:

Robert Fitzhenry, being first duly sworn, on oath, says: That he is a citizen of the United States and of the State of Washington, and that he has been a resident of Seattle, King County, Washington, for the last 33 years; that he was acquainted with the Chinaman named Quong Lee prior to and during the year 1879; that Quong Lee was a merchant on the west side of South 3rd Street, between Washington and Main Streets, of Seattle, and lived in said store with his wife; that Quong Lee had a boy born to him and his wife while living at said store, and said boy was named Tang Tun; that Quong Lee with his wife, daughter and boy, Tang Tun, left for China some time during the year 1884; that he has seen the said Tang Tun often since his return from China in 1897, and believes him to be the same Tang Tun that was born to Quong Lee and his wife as aforesaid.

ROBERT FITZHENRY.

132 Subscribed and sworn to before me this 16th day of July, 1906.

[SEAL.] J. R. POLAND,
Notary Public for the State of Washington,
Residing at Seattle, Washington.

[Endorsed:] Received Jul- 25, 1906. Immigration Service. Sumas, Wash.

[*Affidavit of J. C. Whitlock, Dated July* 16, 1906.]

STATE OF WASHINGTON,
County of King, ss:

J. C. Whitlock, being first duly sworn, on oath, says: That he is a citizen of the United States and State of Washington, and has been a resident of Seattle, King County, Washington, for the last sixteen years; that he is acquainted with Tang Tun, and has known him for the last five years; that Tang Tun is a merchant and a member of the firm of Wa Chong Company, and has been such member for over two years; that prior to that time he was in the employ of Wa Chong Company as driver of their delivery wagon, delivering the goods sold to all parts of the city, and shipping goods to points outside the city; that since said Tang Tun became member of the firm of Wa Chong Company he has continued to drive said delivery wagon, and superintends the warehouse of said firm situated on their farm in South Seattle, and has the management and control of said farm; that affiant has had occasion to visit the store of Wa Chong Company, on business, from four to twelve times a month
133 since May, 1898, and has seen Tang Tun in the store often, as well as delivering truck from the garden to the store and commission men; that affiant was informed by some member of the firm of Wa Chong Company that Tang Tun was a member of the firm and had $1,000.00 interest in the same; that Tang Tun has been here continuously from the time affiant first saw him until he left for China some time the latter part of the year 1905.

J. C. WHITLOCK.

Subscribed and sworn to before me this 16th day of July, 1906.
[SEAL.]
J. R. POLAND,
Notary Public for the State of Washington,
Residing at Seattle, Washington.

[Endorsed:] Received Jul- 25, 1906. Immigration Service, Sumas, Wash.

[*Affidavit of C. W. Chamberlain, Dated July* 19, 1906.]

STATE OF WASHINGTON,
County of King, ss:

C. W. Chamberlain, being first duly sworn, on oath, says: That he is a citizen of the United States and the State of Washington, and has been a resident of Seattle, King County, for the last sixteen years; that he is well acquainted with Tang Tun, and has known him for the last five years; that Tang Tun is a merchant and a member of the well-known mercantile firm of Wa Chong Company, and has been such for over two years last past; that prior to be-

coming a member of the firm of Wa Chong Company Tang
134 Tun was employed by said firm as a clerk in its store, and driver of its delivery wagon, delivering goods to all parts of the city of Seattle, and for shipment to points outside the city; that said firm of Wa Chong Company owns a farm in South Seattle, King County, Washington, which it cultivates in connection with its store, and maintains a stable on said farm for the care of its horses; that Tang Tun has been for some years in charge and had the management of said farm and stable, when not engaged in selling and delivering goods from the store in Seattle; that a large amount of vegetables are raised on said farm which are sold by Wa Chong Company to commission men in Seattle, and from its own store.

C. W. CHAMBERLAIN.

Subscribed and sworn to before me this 19th day of July, 1906.
[SEAL.] H. E. TURNER,
Notary Public for Washington, Residing at Seattle.

[Endorsed:] Received July 25, 1906. Immigration Service Sumas, Wash.

135 [*Letter, Dated July 25, 1906, from H. Edsell to W. B. Estell.*]

Department of Commerce and Labor,
Immigration Service.

Office of Chinese Inspector in Charge.

SUMAS, WASH., *July* 25, 1906.

Nos. 909 and 913.

W. B. Estell, Inspector in Charge, Seattle, Washington.

SIR: I beg to inclose herewith all papers in the case of Tang Tun and Leung Kum Wui, alleged returning native-born citizen of Seattle, and wife, respectively, denied admission at this port on July 5, 1906, and now appealing to the Secretary of Commerce and Labor.

These papers are returned to you for re-examination of the witnesses whose testimony has been introduced on appeal. Insofar as the alleged mercantile status of the applicant Tang Tun is concerned, I see no necessity for further investigation, since it is well established by the applicant's own testimony and that of his witnesses that he was not engaged as a merchant as that term is defined under the Chinese exclusion laws during the year prior to his departure.

In examining Chin Quong, manager of the Wa Chong Company, please question him closely as to what he knows concerning the alleged landing of the applicant Tang Tun at Port Townsend in April, 1897, and as to the circumstances under which the
136 said Chin Quong secured for the applicant the indorsed copy of the identification paper he is alleged to have used in that

landing and which he now presents in support of his claim that he was admitted.

Messrs. Walter Bowen and S. A. Brinker testified as to the genuineness of Collector Saunder's signature on the paper showing Tang Tun's landing in 1897, and took the position that the paper found in the records of the Port Townsend office showing rejection of the applicant Tung Tun on May 25, 1897, could not be correct for the reason that Chinese were at that time always detained on the ship on which they arrived until their cases were disposed of, and in no instance was a ship in port so long as six weeks, which would have been necessary in order that an applicant arriving on the steamer "Tacoma" on April 10th could have been rejected on May 25th. The statements of these witnesses you will readily appreciate would tend to impeach the records of the Port Townsend office. Fortunately, however, I have found that the customs records, District of Puget Sound, show that the steamer "Tacoma" cleared for the Orient on April 16, 1897, four days before Tang Tun is alleged to have been admitted according to the indorsed paper presented by the applicant. If Messrs. Bowen and Brinker are correct in their statements that all Chinese were kept on the vessels on which they arrived at Tacoma until their cases were disposed of, what explanation can they make of this discrepancy? Please ask them. I
137 am informed that a portion of the indorsement on the paper showing Tang Tun's rejection at Port Townsend on May 25, 1897, is in the handwriting of Mr. Bowen. Have him questioned concerning this, and as to the genuineness of Mr. Saunder's signature on the said paper.

With further reference to the testimony of Messrs. Bowen and Brinker, I have been told by several persons acquainted with the procedure under which Chinese applicants were handled at that time that it was the custom to hold applicants at Tacoma on the vessels on which they arrived, the Collector of Customs or his deputy disposing of as many cases as possible up to the time of the vessel's departure; that all applicants whose cases were not disposed of at the time the vessel sailed were carried to Victoria, B. C., and there landed under an arrangement with the Canadian Government officials. The investigation of their cases would then continue, and when the Collector was satisfied that an applicant was entitled to admission, he would be notified at Victoria and would come forward on a local steamer; if the investigation showed the contrary, the applicant would be notified that he had been rejected and such entry would be made in the records. Please make an effort to establish by Messrs. Bowen and Brinker that such was the practice. If they dispute it, I would request that an effort be made to secure the testimony of some one or two witnesses acquainted with the facts. Messrs. Chin Keay and Chin Len of the Quong Tuck Company have both told me that such was the procedure, but I would prefer, if possible, to have white witnesses on this point, and am
138 told that a customs inspector named Dorsey, now at Tacoma, and possibly Special Deputy Collector Fairweather, now in charge of the Tacoma office, would be able to testify on this point.

If not they, probably some officer or clerk in the office of Dodwell & Co. at Tacoma would be able to give the desired statement.

Among the papers inclosed you will find a typewritten list of Chinese who arrived on the steamer "Tacoma" April 10, 1897; the said list having been prepared, I am informed, according to a custom prevailing in the office of Collector Saunders by which such a list of each vessel's arrivals was used for the purpose of making memoranda as to the examination and disposition of each case as it was considered by the collector on the ship. Please have Mr. Bowen examined on this point in order that we may have testimony that such was the custom, and then ask him if he himself did not make the notations on this particular list whereby are shown the rejections of four alleged native-born citizens—Gin Goon, Ah Toye, Tang Tun and Teft Mun.

In the examination of the witnesses Walter Burritt and Robert Fitzhenry, I have nothing to request further than that they be carefully interrogated as to their knowledge of the applicant's alleged birth in Seattle, and as to how they gained the knowledge they claim to have. I will appreciate it, however, if the investigating inspector will make report on the experience your office has had with these witnesses in alleged native-born and minor son cases, and as to the frequency with which they appear as witnesses in behalf of such applicants.

139 Witnesses Chamberlain and Whitlock testified on points involving the applicant's mercantile status, and I do not think a further examination of them is necessary, unless in your judgment Attorney Whitlock can be profitably questioned concerning his association with Chinese identification papers bearing alleged "Saunders" indorsements.

I know you will appreciate the necessity for great care in this investigation in order that no opportunity for developing its fraudulent character may be lost. In the preparation of the testimony and report, kindly furnish them to this office in duplicate so that one copy may be retained in this office and the other forwarded to the Department where it will remain.

Respectfully,

(Signed) H. EDSELL,
Chinese Inspector in Charge.

CCC.

(Copy respectfully mailed Port Townsend office.)

[*Testimony of Robert Fitzhenry, Dated July* 31, 1906.]

Department of Commerce and Labor,
Immigration Service.

OFFICE OF IMMIGRANT INSPECTOR IN CHARGE,
SEATTLE, WASH., *July* 31, 1906.

In the Matter of the Application of TANG TUN for Admission to the United States as a Returning Native-born Chinese.

Witness ROBERT FITZHENRY called and sworn.

Q. What is your name?
A. Robert Fitzhenry.
140 Q. What is your business?
A. I am not doing anything now.
Q. How long have you been a resident of Seattle?
A. Well, we will have to call it 34 or 35 years. I always call it 30 years.
Q. Do you recognize the photograph I show you? (Showing photograph of Tang Tun attached to paper presented to him, and on which he claims to have been admitted to the United States by J. C. Saunders, Collector of Customs, in 1897.)
A. No, sir; that is, I recognize him, but that is not the man I am looking after.
Q. You mean that it is not a photograph of the man you came here to testify for?
A. Yes, that is what I mean.
Q. Do you know that man whos- photograph this is, at all?
A. I think I do, but I don't know. I think I do.
Q. Whos- photograph is it?
A. I could not say.
Q. Did you ever know a Chinaman named Quong Lee?
A. Yes.
Q. When did you become acquainted with him?
A. I knew him first in about 1879.
Q. Where was he then?
A. At that time it was 3d St., between Washington and Main Sts., now it would be 2d Ave. between Washington and Main, about the middle of the block.
Q. What was his business at that time?
A. Chinese grocery store.
141 Q. Did he live in that store?
A. Yes.
Q. Did he have any family?
A. Yes; he had one son that I saw and knew.
Q. What was the name of that boy?
A. Gim, I think it was; yes, it was Gim, I know that is what his father called him.
Q. Did he have any other name?

A. Yes, he did, Gim Tin or Tin Gim. I don't remember which name was first.

Q. Did he have any other names?

A. I don't recollect any now.

Q. Was he ever known by the name of Tang Tun?

A. He might have been, but Gim is the name I knew him by.

Q. When did you first see that boy?

A. I saw him in '79 and up to 1884.

Q. How old was he when you first saw him?

A. I should judge he was a year old; the father had him in his arms.

Q. Where was that boy born?

A. I should judge he was born there; he was only a little fellow when I first saw him. I think his father told me he was born there.

Q. Did you know his mother?

A. I knew a woman there but I don't know whether she was his mother or not.

Q. Did Quong Lee have any other children?

A. No, not that I knew of; that is the only one I saw.

Q. What became of that family?

142 A. They went away from here about 1884, '83 or '84; where they went I don't know.

Q. Did you ever see any of that family after that?

A. I saw the boy about 7 or 8 years ago at Wa Chong's, and I saw him *of* and on up to about a year and a half ago.

Q. How often did you see that boy from the time you first saw him up to the time he went away, in 1884?

A. Oh, I saw him—I couldn't say; off and on right along, probably 3 or 4 times a week.

Q. On which side of 3d St. did he live?

A. West side; it is now 2d Ave.

Q. What building stands there now?

A. The St. Charles hotel, they are putting up a new building there now.

Q. How old was that boy when he went away in 1884?

A. I should judge about 5 years old.

Q. Have you ever seen Quong Lee since then?

A. No, I have not.

Q. Did that family all go away together?

A. Yes, they did.

Q. How old a man was Quong Lee when he went away?

A. Oh, Quong Lee, I should say about 30 years old.

Q. You say that you visited that store two or three times a week from 1879 to 1884?

A. I passed the store; I didn't go in that often.

143 Q. If Quong Lee had had more than one child you would have known it would you not?

A. I think I would; he only had one that I know of.

Q. Could he have had any more and you not have known it?

A. Not if it was around that store.

Q. Could he have had another child about the same age as this boy, born at the same place either a short time before or after the birth of this boy, and you not know it.

A. I don't think that he could.

Q. You say that you saw this boy of Quong Lee's, 7 or 8 years ago; how did you know that it was the same boy?

A. I could tell him by his looks.

Q. Then you would know him if you were to see him now?

A. Yes, I would.

Q. And this photograph, the same that I showed you before, is not him? (Photograph of Tang Tun mentioned on page 1.)

A. No, it is not.

Q. You couldn't be mistaken as to that?

A. No, I could not; I know that boy; it is a different boy.

Q. Is this a photograph of Quong Lee's boy? (Showing photograph on application of Tang Tun.)

A. Yes, that is him.

Q. Do you recognize him as the boy whom you say was born here and went away in 1884, or as the boy you say you saw 7 or 8 years ago in Wa Chong's?

144 A. This photograph is that of the boy I knew from 1879 to 1884, and that I saw 7 or 8 years ago and up to a short time ago.

Q. You can positively identify this photograph as that of the boy that you knew from 1879 to 1884?

A. Yes.

Q. And you can't identify this photograph at all? (Photograph of Tang Tun mentioned on page 1.)

A. I know the boy but I can't recall his name just now. I think he is the boy who was born on the corner of Yesler and 2d Sts. Yes, he is the same boy that lived and was born there.

Q. You say that this photograph (photograph mentioned on page 1) is that of a boy whose name you forget, but who was born on Yesler and 2d Sts.; do you know the name of the father of this boy?

A. I knew it; let me see; I don't recall it now.

Q. Now, as a matter of fact, are not both of these photographs of the same boy? (Photograph mentioned on page 1 and that on application.)

A. No, they are not; this boy (photograph mentioned on page 1) was born on 2d and Mill St.; the father then moved to near the old Wa Chong Co.'s place.

Q. What kind of a building was it in which Quong Lee lived and in which you say this boy was born?

A. It was a wooden building; stood up on stilts, up 8 or 10 feet.

Q. How many stories high?

A. Only one.

Q. Where did the family live?

145 A. In the back part of the store.

Q. Did they live there all the time up to 1884?

A. Yes.

Q. When you saw this boy 7 or 8 years ago did you recognize him right away as the boy you had known from 1879 to 1884?

A. Yes, I did; that is, I did but I didn't say anything to him at that time.

Q. You recognized him because he looked as he did when you saw him in 1884, did you?

A. Yes.

Q. You didn't need to have any one tell you who he was?

A. No.

Q. Did he look anything like this photograph at that time? (Showing photograph mentioned on page 1.)

A. No, that is not his photograph; I told you that before.

Q. You say that this photograph is not his, and does not look as he did 7 or 8 years ago; then how is it that this is the photograph that he presented at that time as his and on which he claims that he was admitted to the United States in 1897?

A. I don't recollect that photograph at all as him. I think it is some one else.

Q. You have been a witness on a large number of Chinese cases, have you not?

A. Well, I have, yes.

Q. All, or nearly all, of those cases have been those of boys that you claimed were born in this city, were they not?

A. The most of them were.

146 Q. What was the name of the applicant in the last case that you testified on?

A. Let me see; that was about two weeks ago; let me see—what was his name? I don't recollect now.

Q. Do you remember where the boy on whos- case you testified on a couple of weeks ago was born?

A. I don't recollect now.

Q. Can you give me the names of any of the applicants on whose cases you have testified?

A. No, I can't now.

Q. How is it that you remember all about this case and can't remember anything about any of the rest?

A. I don't know.

Q. You always manage to remember all the particulars of a case whenever you come up here to testify, but afterwards you can't remember anything about them; how is that?

A. I can't say.

Q. You say that you positively identify the photograph of a man 25 or 26 years old as that of a baby you knew when he was 5 years old; now in the last case you were up here as a witness on you said that you did not believe that any one could do that, and also said that you could hardly recognize your own children, didn't you?

A. Yes, maybe I did say that.

Q. And now you come up here and positively swear that this photograph of a man 25 or 26 is the same as the baby you knew when it was 5 years old?

A. I think it is the same.

Q. Who asked you to testify in this case?

147 A. Mr. J. C. Whitlock; he sent after me three or four times.

Q. Did he show you a copy of this photograph? (Photograph on application.)

A. He did not.

Q. Did any one?

A. No.

Q. Then you never saw a copy of this photograph before you came to this office?

A. No, I didn't even see the papers.

Q. How did Mr. Whitlock know that you knew about this boy's birth?

A. Well, I tell you I don't know what he did know.

Q. Didn't you talk the case over with him at all?

A. No, I didn't.

Q. You didn't talk to him about this case at all?

A. Well, of course I did a little, but very little.

Q. When did you talk to him about it?

A. Oh, several days ago.

Q. Didn't you talk to him this morning about it?

A. No, he just told me to come up here; that was all.

Q. And he didn't show you a copy of this photograph this morning or any other time? (Photograph on application.)

A. No, he didn't.

Q. How much do you receive for your services as a witness on this case?

A. I don't know whether I get anything; he told me he would pay me.

Q. Who told you that?

A. Mr. Whitlock.

148 Q. How much did he say he would pay you?

A. He didn't say; I left it to him.

(Signed) ROBERT FITZHENRY.

I certify the above is a true and full transcript of the notes made by me at the time of examination; said notes being subscribed by witness who was sworn by me before making statement.

THOS. M. FISHER, JR.,
Immigrant Inspector.

[*Testimony of Walter Burritt, Dated July* 31, 1906.]

Department of Commerce and Labor,
Immigration Service.

OFFICE OF IMMIGRANT INSPECTOR IN CHARGE,
SEATTLE, WASH., *July* 31, 1906.

In the Matter of the Application of TANG TUN for Admission to the United States as a Returning Native-born Chinese.

Witness WALTER BURRITT called and sworn.

Q. What is your name?
A. Walter Barritt.
Q. What is your business?
A. I am in the real estate business now.
Q. How long have you been a resident of Seattle?
A. Over 33 years.
Q. Do you recognize the photograph I show you? (Showing photograph of Tang Tun, attached to papers presented by him, and on which he claims to have been admitted to the United States by J. C. Saunders, Collector of Customs, in 1897.)
A. I don't think I do, not that fellow.
149 Q. Then you don't know whose photograph that is?
A. I can't locate him; I don't think I ever saw him.
Q. Did you ever know a Chinaman named Quong Lee?
A. Yes.
Q. When did you first become acquainted with him?
A. I knew him along in about 1877; I think — was in '77, or the first of '78.
Q. What was his business at that time?
A. He and two or three others had a store on South 3d St., between Main and Jackson Sts.—no, it was between Main and Washington Sts.
Q. Well, which was it, between Main and Jackson or Main and Washington Sts?
A. Main and Washington.
Q. Did Quong Lee live in that store?
A. Yes.
Q. What was the name of that firm?
A. Chin Lee Sing.
Q. Did Quong Lee have any family?
A. He claimed to have a wife.
Q. Any children?
A. Yes.
Q. How many?
A. Well, my recollection is that he had a boy. I don't know whether the girl belonged to him or not, there were three families

in the building. I don't know whether any of them belonged to him or not.

Q. Do you know that Quong Lee had a boy?

150 A. Oh, yes.

Q. How do you know that?

A. I saw him carr-ing him around when he was a little fellow.

Q. You judged that the boy was his because he was carr-ing him; is that right?

A. Oh, I saw the mother of the child in their rooms around the kitchen.

Q. What was the name of that boy?

A. Well, they used to call him Tan; that is the only name I knew him by.

Q. How old was that boy when you first saw him?

A. He might have been two weeks.

Q. In what year was that?

A. That was in '79.

Q. Where was that boy born?

A. In that store.

Q. What became of that family?

A. They left here, I think, in '84; they went to China.

Q. How often did you see that boy from the time you first saw him up to the time he went away in 1884?

A. Oh, I don't know how often. I passed by the store on an average of three times a day for 3 or 4 years.

Q. Did any of that family ever return to this country?

A. Yes, the boy came back.

Q. When did he come back?

A. I think it was in 1897 I saw him first.

151 Q. Where did you meet him then?

A. I saw him in Wa Chong's store.

Q. Did you recognize him as the boy you had known?

A. I thought I knew him when he first came back, and I asked Wa Chong about it, and he said it was the boy that went away; he came back and worked in that store.

Q. Did you have any trouble in recognizing him?

A. Why, I didn't think so; no, nothing only that Wa Chong said he had just come back from China, and was the same boy. I think Wa Chong called him Tang Tun at that time.

Q. Would you have known him if Wa Chong had not told you about him?

A. I think I should have recollected him.

Q. Is this his photograph that I showed you awhile ago?

(Photograph mentioned on page 1a)

A. That is not him; that is a photograph of a boy much older than he is.

Q. Do you mean that it is a photograph of a boy older than he is now, or older than he was in 1897?

A. I mean that it is of a boy much older than he is now.

Q. Then this photograph does not resemble the boy of Quong Lee's, who you say was born in this city?

A. No, it does not.

Q. It couldn't be a photograph of that boy, could it?

A. No, it couldn't.

152 Q. On which side of 3d St. was that building in which you say Quong Lee lived and this boy was born?

A. On the west side; it is now called 2d Ave.

Q. What kind of a building was it?

A. A two-story wooden building; he was born in the part of the building that was the old Chinese Joss house and theater; the store was on the side, the Joss house behind it, and the theater above it; he was born on the second floor, on the south side; they lived in the 2d story.

Q. If Quong Lee had more than one child would you have known it?

A. I think I would; my recollection is that there were three, four or five girls in that building. I don't know whether any belonged to him or not; I think maybe he had one or two girls; I think there were three boys and five girls in that building.

Q. Did you know any of the others?

A. Yes, all of them.

Q. What were their names?

A. I don't remember now.

Q. What were the names of some of them, or the names of the parents of some of them?

A. I can't recall them now.

Q. How is it that you can remember all about the applicant, but not about the others?

A. I don't know; I guess I knew him better.

Q. Do you recognize this photograph? (Showing photograph of Tang Tun attached to his application.)

153 A. Yes, that is Tang Tun; I know him well.

Q. Do you identify him as the boy you knew from 1879 to 1884, or as the boy you knew from 1897 till the present time?

A. It is the same boy that I knew all the time. I have not seen him for a year.

Q. This other photograph that I showed you is not the same boy?

(Photograph mentioned on page 1.)

A. No, it is not.

Q. You are quite sure of that?

A. Yes, I am.

Q. The boy never looked like this photograph? (Photograph mentioned on page 1.)

A. No, he never did.

Q. How is it, then, that the applicant presented this photograph (photograph mentioned on page 1) as his, and claimed that he was admitted in 1897 on this paper?

A. Well, I don't know anything about that at all. I do know

that it is not a picture of Tang Tun, or any one else that I ever knew.

Q. How old was Quong Lee when you last saw him?

A. I should judge he might have been 30 or 35.

Q. You took Wa Chong's word for it that the boy you saw in 1897 and the boy who you say was born here, were one and the same, didn't you?

A. Why, at the time we were talking about it, yes; he
154 wanted to know whether I recollected the boy; he told me he was born here by the old theater; when he told me that I recollected the boy.

Q. Did that family live in the same location from 1879 to 1884?

A. I think they did all the time.

Q. What building stands there now?

A. They are putting up a new building there now, and the hotel that used to be the St. Paul is on part of the lot.

Q. You have been a witness on a large number of Chinese cases, have you not?

A. Yes.

Q. Almost all of them have been boys that you claimed were born in this city, were they not?

A. The most of them.

Q. What was the name of the applicant in the last case in which you testified?

A. Chee Foo.

Q. Was that testimony taken in this office?

A. No, in Commissioner Bowman's office.

Q. What was the last case you testified in in this office?

A. I forget now.

Q. That was a couple of weeks ago, was it not?

A. I think it must have been 4 or 5 weeks ago.

Q. Do you remember the name of the applicant in the case before that?

A. No, I don't.

Q. Do you remember the names of any of the applicants you have testified for?

A. No, only the one in Bowman's.

Q. Do you remember where the last one you were a witness for in this office was born?

A. No, I don't.

Q. How is it that you can remember all about things that
155 happened in this case and can't remember the names of cases you were witness on a couple of weeks ago?

A. Because I was better acquainted with this boy than the rest.

Q. Isn't that the same answer you make every time you come up here to testify in a case?

A. I don't think so.

Q. Every time you come here to testify you say you have forgotten all about the cases you were a witness on before, and say that you re-

87

member that particular one on which you are a witness because you were better acquainted with that boy than the others; isn't that so?

A. Well, maybe I forget sometimes.

Q. Who asked you to testify in this case?

A. I think Lawyer Whitlock.

Q. Don't you know?

A. Yes, he did.

Q. Did he show you a copy of this photograph? (Photograph on application.)

A. Yes.

Q. Did he tell you it was the same boy you used to know?

A. No, he didn't; he asked me if I recollected him. I told him, yes, he used to be in Wa Chong's store.

Q. Did you tell him that you knew he was born here?

A. He asked me if I recollected his being born here. I said I did.

Q. How did he know that you knew anything about this boy?

A. I couldn't say who told him.

Q. You were in his office this morning just before comming to this office, were you not?

156 A. Yes.

Q. Mr. Fitzhenry was there with you, was he not?

A. Yes, he was there.

Q. Didn't Mr. Whitlock show you a copy of this photograph this morning? (Photograph on application.)

A. Yes, he did.

Q. Did he show it to Fitzhenry also?

A. Yes, he showed it to both of us.

Q. Then if Mr. Fitzhenry says that he never saw a copy of that photograph before, and that Mr. Whitlock never showed him one, is he telling the truth?

A. Mr. Whitlock showed both Fitzhenry and me the photograph this morning.

Q. Did he talk the case over with you and Fitzhenry?

A. Yes, a little.

Q. How much do you get for your services as a witness in this case?

A. I can't tell you. Whitlock said he would pay me my fee; if he don't, I guess the Chinaman will.

(Signed) W. BURRITT.

I certify the above is a true and full transcript of the notes made by me at the time of examination; said notes being subscribed by witness who was sworn by me before making statement.

THOS. M. FISHER, JR.,
Immigrant Inspector.

157 [*Testimony of S. A. Brinker, Dated August 5, 1906.*]

Department of Commerce and Labor,
Immigration Service.

OFFICE OF IMMIGRANT INSPECTOR IN CHARGE,
SEATTLE, WASH., *August* 6, 1906.

In the Matter of the Application of TANG TUN for Admission to the United States as a Returning Native-born Chinese.

Witness S. A. BRINKER called and sworn.

Q. What is your name?
A. S. A. Brinker.
Q. What is your business?
A. U. S. Customs Inspector.
Q. How long have you been Customs Inspector?
A. A little over 13 years.
Q. You were in the service under Collector J. C. Saunders?
A. Yes.
Q. At that time the Chinese business was handled by the Collector of Customs?
A. Yes.
Q. Did you handle any of the business yourself?
A. No. I often attended Mr. Saunders as he would admit them in the room on the ship.
Q. You are familiar with Mr. Saunders' signature?
A. Yes.
Q. I show you a paper Mr. Brinker endorsed: "Arrived at Tacoma, Washington, Apr. 10, 1897, on S. S. "Tacoma" from China and admitted April 20, 1897—J. C. Saunders, Collector," and ask you if you think that is the signature of Mr. Saunders?
A. I do.
158 Q. Is the balance of the writing or endorsement his?
A. The other writing looks similar to his, but the signature looks genuine to me.
Q. You are positive that is his signature?
A. Yes.
Q. I will show you another paper, attached to which is a photograph of the same man endorsed across it in red ink the following: "Rejected May 25th 1897, J. S. Saunders, Collector," and ask if that is the signature of Mr. Saunders?
A. That looks like Mr. Saunders' signature, but the other writing I never saw written just that way.
Q. You are positive that the signature is that of Mr. Saunders?
A. Yes.
Q. Did you have anything to do with the keeping of the records?
A. No.
Q. Was there any detention house for Chinese at that time?

A. No, there was not. Mr. Saunders came down on the ship and once in a while Mr. Bowen.

Q. Suppose they had not got through with the investigation before the ship sailed, what did they do.

A. I do not know. Do not remember a case of that kind.

Q. Did they not take these men back on that ship as far as Victoria, keep them in detention house there, and later bring them over on the local boats?

A. Never knew of them doing that. Have known them to take them off at Victoria on "habias corpus."

159 Q. Did they not bring a large number of Chinese over to Port Townsend on the S. S. "Kingston"?

A. Quite often. They always sent the papers over to Victoria and let the Inspectors bring them over.

Q. But were those men not held in detention house at Victoria until brought to Port Townsend?

A. Do not know.

Q. *They* may have been a practice of taking these men off this liner at Victoria and keep in detention house and bring to Port Townsend later and you not know it?

A. Yes.

A. (continued). When I went over with the ship from Tacoma they were locked up on board, and after leaving Port Townsend they were unlocked. They may have had a detention house there.

Q. How long did that line of steamer- usually stay in port?

A. From ten to twelve days.

Q. Did you ever know of them being longer than that?

A. Yes.

Q. Could on the schedule those boats were running at that time, this man have arrived on April 10th, and been rejected on the 25th of May?

A. I do not know how he could. Do you remember of them staying in there that long.

Q. In case they had a detention house at Victoria and the practice was taking them to Victoria and leaving them there, later bringing them to Port Townsend on local boats, it could be?

A. Yes.

160 Q. The records at the custom-house at Port Townsend show that the steamer "Tacoma" cleared for the Orient on April 16, 1897; this paper which I first showed you says that the applicant was admitted April 20th, 1897, four days after the records at Port Townsend shows the ship cleared. If there was no detention house how could that be.

A. I do not know unless it would be on "habias corpus." I know that several were taken off on writ of that kind.

Q. You say you are sure that both of these signatures are in the handwriting of Mr. Saunders?

A. Yes.

Q. Then how do you account for the fact of the discrepancy between the two, one showing that he was admitted and the other that

he was rejected, the one showing that he was rejected being part of the records and office files of Collector Saunders?

A. I cannot account for it, unless he was taken off at Victoria.

Q. You made an affidavit before Mr. Hausman on the 16th of July, this year?

A. Yes.

Q. In that affidavit you say that the Chinese were not allowed to leave the steamer on which they came from China until after a decision allowing them to enter the United States or rejecting them was rendered? In case they had a detention house at Victoria and the practice was, as I have aforesaid, they did leave the steamer before decision was rendered, did they not?

161 A. They did not land in the United States. Do not know anything about the Victoria part of it.

S. A. BRINKER.

Subscribed and sworn to before me, this 6th day of August, 1906.

THOS. M. FISHER, JR.,
Immigrant Inspector.

[*Testimony of Walter Bowen, Dated August* 3, 1906.]

Department of Commerce and Labor,
Immigration Service.

OFFICE OF IMMIGRANT INSPECTOR IN CHARGE,
SEATTLE, WASHINGTON, *August* 3, 1906.

In re Application of TANG TUN for Admission into the United States as Returning Native-born Chinese.

Witness WALTER BOWEN called and sworn:

Q. What is your name?

A. Walter Bowen.

Q. What is your address?

A. 906 Western Avenue.

By WITNESS (to Chinese Inspector Fisher):

Q. What position do you hold?

A. Chinese inspector and immigrant inspector, and, as such, the law gives the power to administer an oath.

Examination of witness continued:

Q. What is your business, Mr. Bowen?

A. Commission merchant.

Q. You were special deputy collector of customs under Collector Saunders, were you not?

162 A. Yes; J. C. Saunders.

Q. During what years were you special deputy?

A. During his term. I think it was '94; for four years—during his term I was deputy.

Q. At that time the Collector of Customs and his deputies were handling all Chinese business, were they not?

A. Yes.

Q. You handled quite a bit of it yourself, did you not, Mr. Bowen?

A. Yes.

Q. You were very familiar with Collector Saunders' signature?

A. Yes; saw him sign it for four years.

Q. I will show you a paper, and will ask you if that is his signature—Collector Saunders—upon which one Tang Tun claims he was admitted by Collector Saunders in the year 1897, and will ask you if the signature across the face of it is that of Collector Saunders?

A. I don't think there is any doubt about that.

Q. Can you say positively that it is his signature?

A. Yes, I would swear to it. (Paper referred to is that presented by Tang Tun, and upon which he claims to have been admitted to the United States by J. C. Saunders, Collector of Customs in 1897.)

Q. I will show you another paper, Mr. Bowen, in which it is alleged that this same man, Tang Tun, was rejected, and another signature there, and will ask you if that is the signature of J. C. Saunders, Collector of Customs?

A. That? Yes, I don't think there is any doubt about that.

163 Q. You think both of them are genuine signatures, do you?

A. Yes.

Q. You were in his office at that time, were you not?

A. Yes; I saw him sign a great many of them.

Q. How do you account for the fact that one paper shows the man admitted and the other paper shows the same man rejected?

A. Well, I don't know; I cannot understand that—signed by the same parties too.

Q. Referring to the first-named paper—this shows arrival at Tacoma on April 10, 1897, and admitted April 20, 1897? And this (referring to second paper), shows rejection in the same year, doesn't it?

A. Yes—the same man, too.

Q. You believe that both of those are the same signature?

A. I don't think there is any doubt whatever about the signature of either one.

Q. You being familiar with Mr. Saunders' way of doing business at that time, would it have been possible for him to have written both of those?

A. It would certainly be possible, for he wrote them; I would swear that he did write them; I don't think that there is any doubt about it.

Q. How would you account for the conflict in the two papers?

A. Well, I don't know. Now, May 25th—let me see—he might possibly have been arrested—he may have had new evidence

164 afterward that rejected—that sent that man back—but the records in the custom-house would show that.

Q. But, in order to send a man back after landing, the law is and always has been, that he must be taken before the United States Commissioner?

A. Yes, that is so. I don't remember a case of that kind—that is the only way I can account for it—might have been on further investigation. You understand they had no house of detention at the time at Tacoma. The man was admitted probably the day that the steamer returned, and it is possible that they discovered afterwards, in May, from some report of some gentleman somewhere, that he was not entitled to land, and he might have sent him back. I do not know; I don't remember.

Q. Is the balance of the writing in red ink, above the signature of J. C. Saunders, on the paper I first showed you, Mr. Saunders' writing?

A. Yes, I think so. Mr. Saunders was a very fine penman. You will find a difference in my signature on a great many of these papers than you would find on my record in the custom-house, for the reason that I for years have written with a certain pen, and on the steamers they had a lot of bum pens. He, Mr. Saunders, wrote the same signature with any kind of pen.

Q. Is the balance of the writing in red ink above the signature in his writing?

A. I think so. Of course, it don't look much like his writing; he was a very smooth writer. That "rejected," there I don't
165 know about—that "rejected," I told you, it looks a little bit off—but that is May 25, 1897; that "7" is about the same as it is here (comparing papers showing admission and rejection, in year 1897).

Q. From your personal knowledge of the records, as kept at that time, Mr. Bowen, would they have made a record of one paper and marked it as "Rejected" if he had not been rejected?

A. No, I don't think so. I told you I kept a record there, a little book. The record should show all of this, if he turned the paper over to me. In some instances he would take and stick them in the file and didn't give them to me. I know that it happened sometimes.

Q. Wasn't it the custom, Mr. Bowen, to also keep a list of the passengers arriving on that steamer, with your records in the office?

A. My recollection is that when a great many Chinese came Mr. Saunders would take a whole bunch of certificates, and he would have a stenographer make up a list and take it along with him to Tacoma. Whether that was kept in the regular file I don't remember, but often a whole list was made by the stenographer.

Q. I will ask you if this is the kind of a list that you *that you* referred to? (Showing list of S. S. "Tacoma," arriving at Tacoma, April 10, 1897, and for the purpose of identification referred to by the number stamped on the face and back, viz.: 12244.)

166 A. Yes.

Q. By the steamer "Tacoma," April 10?

A. Yes, there is Saunders' writing on that.

Q. That is Saunders' writing?

A. Yes.

Q. That is Saunders' writing, "Tacoma, April 10, 1897"? The writing in red ink is Mr. Saunders' writing, is it?

A. Yes, that's it—oh, yes, that's it.

Q. I will call your attention to the name Tang Tung on the last page, and would ask if the word "rejected," written in red ink after that name—I would ask you if that is in Mr. Saunders' writing?

A. Yes—here is my writing right here. (Indicates.)

Q. That is yours at the bottom?

A. That's mine—"Admitted, April 15." This (referring lower on list, last page) is just a copy; I made a note, "Admitted April 15, by Henry Drum and J. C. Saunders."

Q. I will call your attention to the last two names on the next to the last page, and will ask you if the word "rejected" written in red ink after them, was written by Mr. Saunders?

A. Yes, I think so; that is all his writing.

Q. It is all his writing?

A. I don't see any writing on there that is not his, except Joung Ling, Tong Fook, and Tom Kee, the three names next to the last.

Q. You said awhile ago, Mr. Bowen, that at that time they did not have a detention house in which to put the Chinese?

A. Yes, sir.

167 Q. What was the custom?

A. To hold them right on the steamer.

Q. And supposing they had not finished at the time the steamer was ready to sail?

A. They took them away—I think took them to Victoria, and held them there.

Q. Held them there?

A. I think they did—that is my impression.

Q. And then sent them over on the local steamer to Port Townsend?

A. I think so.

Q. They used a detention house at Victoria?

A. We had nothing to do with that; the steamship company had the Chinese who were not through, landed or rejected, at the time the steamer sailed, taken to Victoria and held there and brought over on the local boat; that's what I was told; of course, I was never there.

Q. About how long did these boats remain in port on the sound?

A. I think ten or fifteen days—my impression is that they stayed about that long.

Q. They didn't stay longer than that?

A. Sometimes they did. A boat came back in distress—was found disabled at sea, and came back here; she had a lot of Chinamen on; she stayed here a long time.

Q. In the affidavit made by you on the 14th of July, 1906, you state that at no time during the time you were in office do you recol-

lect of a steamer remaining in port from the 10th of April to the 25th day of May following—is that right?

168 A. It could not be, unless it was that steamer; I can't say; sometimes they were held for cargo; I would not say positively. I don't think it was often the case.

Q. Supposing they were not finished with these Chinese as they were taken back to Victoria and left there, and came over later on the local boat, would not the papers show they arrived at the time of the original arriving of the steamer on which they came from China, and if admitted or rejected show the date of admission or rejection with the date of the local boat coming over?

A. I don't know; the papers would show that only if you had one of those lists.

Q. I mean the endorsement across the face of it—for instance, this says "Arrived on April 10, was admitted on April 20?"

A. Yes.

Q. This list shows he arrived April 10; this list also shows he was rejected May 25; could that be possible? Could not he have been taken to Victoria and brought over, and, after examination, rejected?

A. No; I think the papers were examined and we were thoroughly satisfied they were entitled to enter before bringing them over; they didn't run them over on the local boats. The papers were held for further reports; we had to send them east to get reports.

Q. Supposing you wanted to examine the applicant, wouldn't you bring him over for examination, or would you go to Victoria?

A. They would be satisfied from the report; I don't ever remember examining him the second time.

169 Q. Supposing there was something by reason of which you wanted to examine the applicant more closely, either to cor-ob*b*orate certain testimony or otherwise, wouldn't you bring him to Townsend for examination?

A. We never examined any persons only to see that their identification was correct.

Q. You kept an interpreter there?

A. Yes.

Q. Wasn't it the custom when the "City of Kingston" came to the dock to take from fifteen to twenty up to the custom house for examination—bringing them over from Victoria?

A. A good many of them from Victoria the papers used to be sent for examination ahead—unless some fellow we knew.

Q. How did you examine the applicant himself, if not on arrival at Townsend—would not question him at all?

A. Oh, yes; but there was a lot of local Chinese here, Tacoma, Seattle, etc., on those boats; the inspectors would know them all right, and they would come right off the boat; but I don't ever remember re-examining, only for identification marks, those Chinese from Victoria. When they were detained they knew it was generally pretty doubtful and they would have to have a pretty favor-

able report from the special agent or postmaster before we would allow them in.

170 Q. Supposing he was rejected and had been left in the detention house at Victoria by the steamship company, and rejected by the collector later on, he would mark across the paper the date of rejection?

A. If he was rejected?

Q. Yes.

A. Yes, he would.

Q. In case he was left in the detention house, the date of rejection might be some time after the steamer sailed—the original steamer?

A. Yes, that is possible.

Q. Then it is not impossible, in that case, that this man arrived on April 10, and was rejected May 25—supposing he had been left in the detention house at Victoria after the steamer sailed?

A. No.

Q. It is not impossible?

A. No. I don't understand that at all; I don't understand how that come—those two papers that way—it is certainly a——

Q. Well, that was the practice, was it not, Mr. Bowen, that is, for instance, if, say the "Tacoma," on which this man claims to have arrived, to have had an examination and it was not concluded, and the collector satisfied at the time the steamer sailed, and he would have been taken to Victoria and left in the detention house there?

A. I wouldn't say that, for I heard that only from hearsay. I have heard sometimes that they took them off; I don't know it myself, I have heard it from others. Some of those cases were pretty rank and they let them go.

171 Q. And in that case the date of rejection would be at the time he entered that order of rejection—later on—after the steamer sailed?

A. Yes. I made an affidavit relative to one of these certificates.

Q. Yes.

A. That is relative to the signature, is it not?

Q. Yes, and to the remaining of the boat in port?

A. Yes.

Q. Well, the records in the custom-house at Townsend show that the steamer "Tacoma" cleared for the Orient on April 16, 1897; that would be four days before this paper on which the applicant claims he was admitted—before the date on which he claims he was admitted. He must have been left by the steamer or else the endorsement there is wrong?

A. Yes, if the ship sailed at that time.

Q. The records at the custom-house show that the ship sailed on the 16th—this man claims he was admitted on the 20th of April?

A. Yes.

Q. In order that they both be correct, he must have been left somewhere in the meantime?

A. Yes. That is the only way it could happen; that paper should have shown that he was presented from the "King-ston."

Q. If he had been detained in Victoria those four days and had come over on the "City of King-ston," then running between Victoria, Townsend and Seattle, and was admitted from that boat, the papers would show he was admitted from the "City of King-ston," was not that the custom at that time?

172 A. I don't remember about that; of course it should; but Saunders sometimes might make it right from that record he had there. That record he had there is written into a book, and there ought to have been a note in there; if he was admitted from the "King-ston" there ought to have been a note entered in that book, if he gave it to me, showing that he came by the "King-ston" later.

Q. Was it the custom at that time, providing a Chinaman was admitted, to endorse a copy of the application and give it to him?

A. Yes.

Q. You gave it to him at the time he was admitted?

A. Yes.

Q. It was not sent to him some weeks or a month later?

A. Well, now, it might have been sometimes; that was his paper; I don't know what the custom was. I think copies were always given to them so if they needed them to pass an examination anywhere.

Q. Were they given to him at the time of admission?

A. Yes, that was the rule; I remember that; of course he had to have that to pass. I was thinking sometimes they might let it go and some of their friends might get them later. They generally did that themselves.

WALTER BOWEN.

Sworn and subscribed to before me this 14th day of Aug., 1906.

THOS. M. FISHER, JR.,
Immigrant Inspector.

173 [*Testimony of Chin Quong, Dated August* 14, 1906.]

Department of Commerce and Labor,
Immigration Service.

OFFICE OF IMMIGRANT INSPECTOR IN CHARGE,
SEATTLE, WASH., *August* 14, 1906.

In the Matter of the Application of TANG TUN for Admission to the United States as a Returning Native-born Chinese.

Witness CHIN QUONG called and sworn.

Q. What is your name?

A. Chin Quong.

Q. What is your business?

A. I am the manager of the Wa Chong Co.

Q. How long have you lived in Seattle?
A. About 32 years.
Q. Do you know a Chinaman named Tang Tun?
A. Yes.
Q. How long have you known him?
A. About 8 or 9 years.
Q. Where was he when you first became acquainted with him?
A. In Seattle, in the Wa Chong store.
Q. Do you know anything about his birth?
A. Only what I was told. I know nothing about his birth from my own personal knowledge.
Q. Is he a member of the Wa Chong Co.?
A. Yes.
Q. How much interest has he in that firm?
A. $1,000.

Q. How long has he been a member of that firm?
174 A. I think about a little over two years.
Q. Did he work in that store?
A. He worked in that store before.
Q. Didn't he have charge of the Wa Chong ranch?
A. Yes, he did, we have a warehouse there, he had charge of both.
Q. How long was he in charge of that ranch?
A. He was in charge there a couple of years before he became a member of our firm.
Q. He has been in charge of the ranch ever since he has been a member of your firm, has he not?
A. Yes, until he went to China.
Q. He lived at the ranch, did he not?
A. Yes.
Q. He hauled things in from the ranch in a wagon didn't he?
A. Yes.
Q. He also delivered and sold vegetables around the city, didn't he?
A. Yes, and shipped goods also.
Q. You mean by shipping goods that he took your shipments from the store to the depot or wharf, don't you?
A. Yes.
Q. Do you know anything about his admission to this country?
A. No, I don't; at the time he was admitted I was in China.
Q. When did you go to China that time?
A. Well, I think about 1896, I staid there a year and a half and then returned.
175 Q. Did you procure for him, or help him procure this paper? (Showing paper presented by applicant on which he claims he was admitted by J. C. Saunders, Collector of Customs in the year 1897.)
A. No, I didn't. I was in China that year, 1897.
Q. Did you procure for him, or help him procure, this paper after you returned from China?
A. I had nothing to do with his getting that paper.

Q. Then when he says that you got this paper for him he is telling what is not true, is he?

A. He is mistaken if he says that.

Q. Is this a photograph of Tang Tun? (Showing photograph attached to above-mentioned paper.)

A. Yes, that is.

Q. Is this his photograph also? (Showing photograph attached to application.)

A. Yes.

Q. Did you prepare or have prepared, the paper I first showed you? (Paper on which applicant claims he was admitted.)

A. No, I didn't.

Q. Do you know who did?

A. No, I do not.

Q. Is this a photograph of Tang Tun? (Showing photograph attached to record from Port Townsend office on which it is claimed Tang Tun was rejected in the year 1897.)

A. Yes, it is.

Q. Was Tang Tun in Seattle when you returned from China in 1897 or 1898?

A. Yes.

176 Q. Is that the first time you ever saw him?

A. Yes, the first time.

Q. Then you don't know whether he was born in this city or not?

A. I don't know anything about that.

Q. You are sure you had nothing to do with the procuring of this paper for him? (Paper on which he claims admission.)

A. I did not.

(Signed in English.)

CHIN QUONG.

I certify the above is a true and full transcript of the notes made by me at the time of examination; said notes being subscribed by witness who was sworn by me before making this statement.

THOS. M. FISHER, JR.,
Immigrant Inspector.

[*Letter, Dated August* 14, 1906, *from Thomas M. Fisher, Jr., to W. B. Estell.*]

AUGUST 14, 1906.

Wm. B. Estell, Immigrant Inspector in Charge, Seattle, Wash.

SIR: I enclose herewith papers in the case of Tang Tun, applicant for admission to the United States as a returning native-born Chinese, together with the additional testimony taken at request of Chinese Inspector in Charge Edsell.

The statements of Mr. Fitzhenry and Mr. Burritt do not agree in many particulars. Mr. Fitzhenry says the building in which
177 the applicant was born was a one-story building; that the family of Quong Lee, the alleged father of the applicant,

lived in the back part of the store. Mr. Burritt says that the building was a two-story building, that part of it was used by Quong Lee, the alleged father, as a store, and part of it was a Chinese Joss House and theater; that the family lived in the second story of the building, and that the applicant was born there. Both of these witnesses were shown a copy of a photograph of the applicant attached to a paper on which he claims he was admitted by Collector of Customs, J. C. Saunders, in the year 1897, and both of them said that it was not a photograph of the applicant, Mr. Fitzhenry saying that it was a photograph of another Chinaman that he knew, but whose name he did not recall; while Mr. Burritt said it was a photograph of some party whom he had never seen before and whom he did not know; he also said that it was a photograph of a party much older at the time the photograph was taken, than the applicant is now; yet both of these men positively identify the photograph of the same man, attached to his application, as that of a boy who was born in this city in the year 1879, and whom they claim they have known ever since. The fact that they could not recognize the applicant from a photograph taken some ten years ago would show that there was absolutely no possibility of their identif-ing the photograph of the applicant as he looks at the present time as being the same party who was born here in 1879, and would also through doubt on the statement
178 they both made to the effect that they knew, and saw, him after he returned from China in the year 1897, that being taken about the time the photograph they failed to recognize was taken.

Both of these witness- are old-time Chinese witnesses and are known as "professional witnesses," they have appeared regularly from time to time for years, on alleged native-born cases, and, while they can in each instance give all the particulars in regard to the birth, family and place of residence of the applicant, yet each time when questioned in regard to any of the cases they have testified on before, they are unable to give any particulars or even the name of the man for whom they testified.

The statement of Mr. Fitzhenry to the effect that he had not been shown, and had never seen, a copy of the photograph of the applicant attached to his application, and that he had only talked the case over a little with Mr. Whitlock, the attorney for the applicant, and that for several days before he appeared at this office to testify, is impeached by the statement of Mr. Burritt to the effect that both he and Mr. Fitzhenry talked the case over with Mr. Whitlock just prior to their coming to this office, and that they were both shown a copy of said photograph by Mr. Whitlock at that time.

Mr. Bowen who was Special Deputy under Collector of Customs J. C. Saunders, swears positively that the endorsement across the face of the paper presented by applicant and on which he claims he was admitted, was written by Mr. Saunders, and that the sig-
179 nature appearing thereon is that of Mr. Saunders; he also swears the same in regard to the signature appearing on the face of the duplicate of said paper and which is a part of the files

and records of Chinese Inspector in Charge at Port Townsend, yet he cannot account for the fact that the paper presented by the applicant says "Admitted," while that in the records says "Rejected." Mr. Bowen also admits that he has heard that it was the custom under Mr. Saunders to take all Chinese whose cases were not finished at the time of the sailing of the vessel upon which they arrived to Victoria and keep them there until *their* cases were passed upon.

In regard to the custom of detaining Chinese as mentioned above, I beg to say that I had a talk with Mr. Henry Drum, who was Deputy Collector of Customs at Tacoma under Mr. Saunders, and he said that while he did not know where they kept Chinese so held, his impression was that they were held at Port Townsend, in most cases, but that he knew of several cases where Chinese had been landed and held at Tacoma after the sailing of the vessel upon which they arrived; that in such cases, a bond was taken from the steamship company for the keeping of the Chinese until their cases had been passed upon.

In connection with this case, I beg to call your attention to the fact that the statement of the applicant himself, to the effect that he was taken off the vessel upon which he arrived and placed in detention, would tend to impeach any statement that Chinese were never taken from, or held after, the vessel upon which they arrived had departed.

180 After going carefully through all the testimony submitted in this case, I can find nothing that would lead me to alter my former recommendation.

Respectfully,

THOS. M. FISHER, JR.,
Chinese Inspector.

[*Letter, Dated August 13, 1906, from W. B. Estell to A. S. Fulton.*]

Copy.

No. 2109. AUGUST 13, 1906.

A. S. Fulton, Immigrant Inspector, Tacoma, Wash.

SIR: Please call at the office of Dodwell & Company and ascertain, if possible, either by their record or by some one who was in their employ about 1897, where Chinese were detained *t*hose cases were not passed on prior to the departure of the vessel on which they arrived, this for our use in connection with a pending investigation.

I am informed that during the administration of Collector Saunders all applica*tions* whose cases were not disposed of at the time the vessel sailed were carried to Victoria, B. C., and there landed under an arrangement with the Canadian Government officials. The investigation of their cases would then continue, and when the Collector was satisfied that an applicant was entitled to admission he would be notified at Victoria and would come forward on a local steamer. If the investigation showed the contrary, the applicant

would be notified that he had been rejected and such entry
181 would be made in the records. Please ascertain if this is true.

Respectfully,
(Signed)
W. B. ESTELL,
Immigrant Inspector in Charge.

[Endorsed:] Received Aug. 23, 1906. Immigration Service, Sumas, Wash.

follows:

[*Letter, Dated August* 14, 1906, *from A. S. Fulton to Immigrant Inspector in Charge.*]

Department of Commerce and Labor,
Immigration Service.

XXX.

OFFICE OF INSPECTOR IN CHARGE,
TACOMA, WASH., *August* 14, 1906.

Immigrant Inspector in Charge, Seattle, Wash.

SIR: Referring to your No. 2109, dated August 13, 1906, I have called at the office of Dodwell & Co., and learned that Mr. Stewart, Manager of the company, is the only one employed here at present, who was here during the Saunders administration. He states that so far as he remembers, the procedure was similar to that outlined in your letter. . There being no detention house at that time, Chinese were allowed to remain at Victoria pending investigation.

Respectfully,
(Signed)
A. S. FULTON,
Immigrant Inspector.

[Endorsed:] Received Aug. 23, 1906. Immigration Service, Sumas, Wash.

182 [*Telegram, Dated August* 24, 1906, *from J. J. Godfrey to Harry Edsell.*]

Telegram.

62 X B 9 Paid.

Received at 5. Paid.

DATED SEATTLE, W'N, *Aug.* 24, '06.

To Harry Edsell, Inspector in Charge, Sumas, W'n:

Tang Tun Brief will be sent you Sunday's train.

JAMES J. GODFREY.

[Endorsed:] Received Aug. 23, 1906. Immigration Service, Sumas, Wash.

In the United States Department of Commerce and Labor, Bureau of Immigration, Washington, D. C.

In the Matter of the Appeal of TANG TUN, a Native-born Citizen of the United States, and LEUNG KUM WUI, His Wife.

Brief [of Appellant Before the Honorable the Secretary of Commerce and Labor].

Statement of Case.

To the Honorable Secretary of Commerce and Labor, Washington, D. C.

SIR: Tang Tun, appellant herein, a native-born citizen of the city of Seattle, Washington, United States of America, arrived at the port of Vancouver, British Columbia, on the steamship "Empress of China," June 20, 1906, and thereafter on June 22, 1906, arrived at the port of Sumas, Washington.

183 The base of the claim of this appellant for readmission to the United States is the following: During the year 1879 and for several years prior thereto his father, Quong Lee, was a lawfully domiciled merchant residing in Seattle, King County, Washington; appellant claims that while his father and mother were so lawfully domiciled in the United States, his father being manager of the Quong Lee store on what was then Third Street between Washington and Main Streets in Seattle, he was born in said store on the 25th day of November, 1879. Some time during the year 1884 Tang Tun was taken to China by his parents, and remained there until 1897. On the 20th day of April, 1897, he returned to the United States on the steamship "Tacoma," and was admitted by the then Collector of Customs, J. C. Saunders, as a native-born citizen of the United States. Thereafter he continued to reside in the United States, working at one thing and another until a couple of years ago, when he purchased, or was given, a one thousand dollar interest in the mercantile firm of Wah Chung Co., of 406 Main Street, Seattle, King County, Washington.

Some time early in the month of September, 1905, this appellant desiring to return to China temporarily for the purpose of getting married, on September 26, 1905, he appeared, together with his white witnesses, S. F. Coombs and William B. Thompson, before A. C. Bowman, a United States Commissioner for the District Court here, and had identification papers prepared, which set out

184 specifically and precisely the claim on which he desired to be accorded the privilege of a temporary absence in China. According to the record, he then sailed away to visit the Flowery Kingdom, and it is from this visit that he was returning on June 22, 1906.

After the Chinese Inspector in Charge at Sumas had conducted a very searching investigation, the identification papers and other

documentary evidence in this case *was* sent by the Inspector in Charge to the Immigration Inspector in Charge at Seattle, where on July 2, 1906, Inspector Fisher cited before him the two white witnesses named above, Mr. Coombs and Mr. Thompson; despite the fact that the testimony of these two witnesses was to the effect that Tang Tun was born in Seattle, Washington, November 25, 1879, Inspector Fisher wrote through his officer in Charge to the Inspector in Charge at Sumas, stating that Tang Tun had not assumed the burden of proof placed on him by the Chinese Exclusion law, and requested that he be denied admission to the United States. Thereafter, on July 5, 1906, Inspector in Charge Edsell again cited Tang Tun to appear before him, and on the same day (July 5, 1906), entered findings of fact and conclusions of law finding in substance that this appellant had not been born in the United States, making in short a general denial of all the matters and things pleaded in Tang Tun's identification papers of April, 1897, and September, 1905. As these findings and conclusions are of such an extraordinary nature, we have set them out in toto as follows:

185 "The applicant is therefore denied admission on the grounds:

First. That his status has already been adjudicated by officers duly charged with the enforcement of the Chinese Exclusion laws.

Second. Though given an opportunity to show that injustice may have been done by former finding in his case, the applicant has failed to furnish any evidence to support such a conclusion.

Third. The applicant has not furnished sufficient evidence of any status by which he is entitled to admission to the United States.

(Signed) H. EDSELL.
Chinese Inspector in Charge."

From this order of rejection and deportation, this appeal is prosecuted.

Thereafter appellant, through his attorney, filed his notice of appeal, and also a request that further time be granted for the prosecution of the appeal, in order that his status as a native-born citizen might appear more affirmatively from the pleadings and record in this case. On August —, 1906, the Inspector in Charge at Sumas entered an order permitting the taking of further testimony. For that purpose the original papers and pleadings were again forwarded to the Immigration Inspector in Charge at Seattle. On July 31, 1906, appellant produced the following additional white witnesses: Robert Fitzhenry, and Walter Burritt; on August 3, Walter Bowen, the latter having been the Special Deputy Collector at the port
183 of Port Townsend, under the administration of J. C. Saunders as Collector; on August 6, S. A. Brinker, a United States Custom Inspector for over 13 years; on August 14, the testimony of Chin Quong was taken, the testimony of this witness being to the effect that Tang Tun was a member of the Wah Chung Co., and for the purposes of this appeal it is not considered material. The testimony of Mr. Brinker and Mr. Bowen dealt in substance with the

methods of detention, and the handling of Chinese cases under the administration of Mr. Saunders as Collector of Customs at the port of Port Townsend. The two other witnesses, Mr. Fitzhenry and Mr. Burritt testified that Tang Tun was born in Seattle, Washington, on November 25, 1879. This practically constitutes the statement of facts in this case. These matters are so clear from the record that we shall consider them as the basis of our case.

Argument.

Under the facts, as we find them in this case, can this appellant be permitted to land in the United States? This question is best answered by a reference to the opinion of the Supreme Court of the United States, in the case of Wong Kim Ark, reported in 169 U. S., the case then on appeal being practically the same as the one at bar; in the former case the child was born of lawfully domiciled parents, in San Francisco. The set of facts in both cases are almost identical in this, assuming the question of domicile of either class of Chinese to be in doubt or dispute, the treaty of 1880 would seem to cover the status of the father, and throw a cloak of protection around
187 him, even in the absence of this decision. It would seem from a close perusal of the record in the case at bar, assuming Tang Tun had a poor case to go on, it must be seen from the findings of the Inspector in Charge at Sumas that at any rate, Tang Tun has not had a fair trial, because reading the record in whatever way you wish, you will see that the findings of Mr. Edsell, the Chinese Inspector in Charge at Sumas, are entirely unsubstantiated by the evidence, particularly in the following:

"It is a matter of record that another Chinaman and alleged native-born citizen of the United States who was rejected at the same time by the Port Townsend office, having arrived on the same ship with the applicant herein, was subsequently found in the store of the Wa Chong Co., was arrested and after due hearing of his case before the courts, was ordered deported to China and was so deported. Further, it is a matter of record that a number of other Chinese were arrested at the same time as the deported Chinaman above mentioned, all having been found in the Wa Chong store, and all having been in possession of "native-born" papers bearing the alleged indorsement of Collector J. C. Saunders. Each was given due hearing before the proper courts, and each was deported to China by order of the court on a finding that the records of the Port Townsend office did not show the landing claimed."

For the purpose of making this clear, we will for the time being wander from this last citation to mention the opinion of the
188 Supreme Court of the United States in the case of United States vs. Ju Toy, in which Justice Holmes speaking for the Court, said that the District Court of the United States was not authorized or empowered to issue writs of habeas corpus, claiming the right to admission in this country by reason of having been born here of domiciled parents. This was the broadest decision ever

handed down by that august tribunal. The legal reasoning of that decision, and the soundness of its logic was severely criticized both by the bench and bar throughout the nation. Further, a member of that court, Mr. Justice Brewer, characterized the decision as appalling; be the arguments pro and con in the Ju Toy case, as they may, the fact remains that the highest tribunal in this nation, clothed the Secretary of this Department and his subordinate officers with quasi, if not with full judicial powers.

Let us, therefore, reason this proposition from its inception to its logical conclusion. Mr. Edsell, in his finding above set out, states that a number of other Chinese were deported from the Wah Chong building. Now, as a matter of fact, the writer of this brief can neither affirm nor deny that which Mr. Edsell says in his finding, and would like to invite the attention of the Honorable Secretary to this point, and ask if he either can form a decision concerning this point. The answer of course must be in the negative, as the record is absolutely silent on that question. Assuming Mr. Edsell to be right or to be wrong, it does not matter to this case, because if we were to go into the matter at all, the entire facts should be laid before us.

189 We find that in the findings of fact of the Inspector in Charge, an amount of extraneous immaterial matter, which is not, or could not be made by any stre-ch of the imagination, even collateral to the issues of the case at bar. It is a principle which is well grounded in the minds of any person having had a legal training, and even in the minds of every citizen of the United States, that a man on trial, whether it be for millions in the Circuit Court, or in a criminal action where he is to be punished by confinement in prison, or whether he is denied admission to his native country, that he must be allowed a fair hearing of his individual case. Nothing should be considered to excite the passion, prejudice or dislike of the person on whom devolves the duty of passing upon his rights. The denial of this right to a fair hearing is the cause of complaint in this case and in these pleadings. You, Honorable Secretary, were compelled to take official action in a matter similar to the case at bar, in order to obtain a fair hearing for all classes, in Departmental letter of November 5, 1905, No. 49,574.

We find that the Inspector in Charge at Sumas found it necessary, after delivering what might be termed a lecture to the appellant, apperently to justify himself for this order of rejection, proceeded to set out specific reasons therefor. The first of these reasons, namely, that the status of appellant had already been adjudicated by officials duly charged with the enforcement of the Chinese Exclusion law, is rather hard to understand; what he means by it is

190 rather hard to say. In the examination of Mr. Bowen, who was special deputy collector at the port of Port Townsend, under Mr. Saunders, we find the following:

"Q. I will show you a paper, and will ask you if that is his signature—Collector Saunders—upon which Tang Tun claims he was

admitted by Collector Saunders in the year 1897, and will ask you if the signature across the face of it is that of Collector Saunders?

A. I don't think there is any doubt about that.

Q. Can you say positively that it is his signature?

A. Yes, I would swear to it."

The paper referred to is that presented by Tang Tun, and upon which he claims to have been admitted to the United States by J. C. Saunders, Collector of Customs in 1897. (This paper shows arrival at Tacoma on April 10, 1897, admitted April 20, 1897.)

There is another paper, however, in the case, which purports to show that the appellant herein arrived, admittedly, some time in the early part of the month of April, 1897, and was deported May 25, 1897. The testimony of Mr. Bowen clearly shows that there was no detention house for the keeping of Chinese, in the District of Puget Sound, at that time; that Collector Saunders used to board the steamers when they arrived at Port Townsend, and journey to Tacoma to the headquarters of the corporation (The N. P. Ry.), at Tacoma, which was the only Oriental line operating directly out of the Puget Sound ports in those days. There being a sub-
191 stantial conflict in the records, we have taken the testimony of Mr. Bowen to endeavor to clear up the discrepancies in these particulars as he was connected with the Port Townsend office at that time.

Summing up the entire evidence adduced in this case, it would seem to *be* an unbiased mind, all immaterial issues being eliminated, that Tang Tun has assumed the burden of proof in this case, and that the testimony in this case fairly preponderates on the side of the appellant; this being the case he is certainly entitled to admission as a native-born American citizen. The apparent reason of Inspector Edsell's rejection of this appellant, and the cause of his making his general and special findings of fact, is the fact, though the officer is unconscious of it, that his mind seems to be poisoned with an animus directed at Chin Quong, manager of the Wah Chong Co. We do not deny that the testimony given by appellant, and that given by Chin Quong, differs slightly in some particulars, still Honorable Secretary, you will agree with us when we say that oftentimes witnesses who are entirely honest in their statements, make numerous errors as to what occurred at a certain time and place several years removed, and matters which at the time of their occurrence were not considered particularly significant. The Inspector in Charge at Sumas, on the contrary, seems to hold the contra view, thinking it is necessary for these witnesses to corroborate each other in every small detail. It would seem to any person who is familiar with the practical methods employed in the enforcement of
192 the Chinese Exclusion law here, that owing to the fact that Seattle has a very small Chinatown, Tang Tun, if he had made a surreptitious entry into the United States would have fallen in the hands of the ever vigilant Inspectors, and been promptly deported. On the contrary, it appears from the record and the testimony, that Tang Tun landed here in April, 1897, and remained here domiciled in the city of Seattle all of the time up to the month of

September or October, 1905, when he left the United States of his own volition for a visit to the Empire of China.

After looking this case over thoroughly, and considering it from all standpoints, it is perfectly plain that the more likely side of the testimony is that given by the appellant and his witnesses. It therefore follows that error prejudicial to the rights of this appellant has been committed, and that the order of rejection and deportation made and entered in this case July 5, 1906, be reversed, vacated, and held for naught, and that Tang Tun be permitted to enter the United States, and again enjoy the inestimable heritage which is the right of every free born American.

I wish now, very briefly, to consider the case of Leung Kum Wui, wife of appellant herein. I realize of course at the outset that this appeal will be predicated entirely upon the outcome of the appeal of Tang Tun, her husband, as she has no rights which do not come from him, and I claim none for her.

According to the testimony in this case Tang Tun married
193 this appellant on November 30, 1905 (11th month, 4th Chinese calendar). There is no conflict in the testimony as to the fact that Tang Tun and appellant are husband and wife. The only question to be considered is one of law. Can this appellant, as the wife of a citizen of the United States, be permitted to enter the United States? This question is best answered by citing the case of Hopkins, U. S. Marshal, vs. Faschant, decided by the Circuit Court of Appeals for the 9th Circuit, May 2, 1904, reported in 130 Federal, page 839. The facts in that case were identical with the one at bar; this being the case, it is at once established that Leung Kum Wui having been lawfully married to Tang Tun, at once acquires his status as an American citizen. It therefore follows that the order of rejection against this appellant, entered by the Inspector in Charge at Sumas on July 5, 1906, be reversed, and that the appellant be permitted to enter the United States.

Dated at Seatle, Washington, this 25th day of August, 1906.

Respectfully submitted,

J. C. WHITLOCK,
Attorney for Appellants.

JAMES J. GODFREY,
Of Counsel.

[Endorsed:] Original. In the United States Department of Commerce and Labor, Bureau of Immigration, Washington, D. C. In the Matter of the Appeal of Tang Tun, a Native-born Citizen of the United States, and Leung Kum Wui, his Wife. Brief.
194 J. C. Whitlock & James J. Godfrey, Attorneys for Appellant, 901-5 Lowman Bldg., Seattle, Washington.

[*Letter, Dated August 28, 1906, from E. Edsell to the Honorable the Secretary of Commerce and Labor.*]

Department of Commerce and Labor,
Immigration Service.

OFFICE OF CHINESE INSPECTOR IN CHARGE,
SUMAS, WASH., *August* 28, 1906.

Nos. 909 and 913.

The Honorable The Secretary of Commerce & Labor, Washington, D. C.

(Through Bureau of Immigration.)

SIR: I have the honor to transmit herewith the appeal records in the case of Tang Tun, applicant at this port for admission as a returning native-born citizen of Seattle, Washington, and Leung Kum Wui, his alleged wife. Enclosed with the records are the marriage certificates of the applicants and six exhibits having more or less bearing in the cases.

Tang Tun arrived at this port on June 22, 1906, and presented identification papers consisting of affidavits of two white witnesses as to his birth in Seattle (page 1), and of a Chinese witness as to his holdings in a mercantile firm in Seattle (p. 2). The applicant's departure from the United States in October, 1905, was established by an endorsement across the face of his identification papers made by me at the time of his departure.

In his examination by me (pp. 4 to 15) the applicant
195 stated that he had formerly been admitted at Port Townsend as a native-born citizen of the United States, and that he had a paper showing such admission. On being requested to get it, he telegraphed to Chin Quong, present manager of the Wa Chong Co., Seattle, Washington, and duly secured the paper transmitted herewith as exhibit one (1) the said paper containing a photograph, of which the applicant is undoubtedly the original, and being endorsed across the face, "Arrived at Tacoma, Washington, Ap'l 10, '97, on Steamer 'Tacoma' from China and admitted Ap'l 20, '97. J. C. Saunders, Collector."

I had meanwhile undertaken to verify the alleged landing on the records of the Port Townsend office, but instead of verification had found that those records showed the rejection of the applicant both in the book entries of the office and in the identification paper files. I duly secured from the Port Townsend records the original identification papers presented by Tang Tun at the time of his application for admission in 1897, the same being numbered 12,343, and transmitted herewith as exhibit two (2). The said papers are the original copy of those constituting exhibit one (1), the photograph thereon being made from the same negative, but the endorsement across the face is, "Rejected May 25, '97. J. C. Saunders, Collector."

With a desire to give the applicant every opportunity to prove the

merits of his claims, I referred the papers to Seattle for an examination of his witnesses. The transcripts of testimony taken, together with report of the investigating inspector, are pages 21 to 32
196 of the record. I did not consider this testimony of such a standard as would justify me, under the circumstances, in admitting the applicant as a citizen of the United States, and accordingly entered an order of rejection on the grounds:

First. That applicant's status had already been adjudicated by officers duly charged with the enforcement of the Chinese Exclusion laws;

Second. Though given an opportunity to show that injustice may have been done by the former finding in his case, applicant failed to furnish any evidence to support such a conclusion;

Third. The applicant did not furnish sufficient evidence of any status by which he was entitled to admission to the United States.

The third reason for rejection was for the purpose of covering the apparent intention of the applicant to set up for himself the claim that he was a domiciled merchant (p. 2). As the appellant's counsel have made no reference to this point in their argument, I will consider that the testimony of the applicant himself on pages 13 to 15, and that of Chin Quong, pages 104 and 105, conclusively shows that Tang Tun could not maintain a claim that he was a merchant during the year prior to departure. If further evidence is desired on the point, I would refer to the affidavits of appellant's new witnesses J. C. Whitlock, one of his attorneys (p. 63) and C. W. Chamberlin (p. 65). Both of them state in behalf of Tang Tun that he was a driver of the Wa Chung Company's vegetable and delivery wagon and manager of the truck garden and stable.

197 The new evidence introduced on appeal, in so far as the real issues of the case are concerned, is found in the affidavits of four white witnesses (p. 53 to 62). Those of Messrs. Walter Bowen (p. 53 and 54), and S. A. Brinker (p. 56 and 57) identify former Collector Saunders' signature on the paper showing Tang Tun's landing April 20, '97 (exhibit 1), and assert that the paper found in the Port Townsend records, showing rejection of Tang Tun on May 25, 19-7, could not be correct for the reason that Chinese were, at that time, always detained on the ship on which they arrived until their cases were disposed of, and in no instance was a ship in port so long as six weeks, a stay which would have been necessary in order that an applicant arriving on the steamer "Tacoma," April 10, could have been rejected on May 25.

These gentlemen, one a former deputy collector of customs, and the other at present a customs inspector in the service of the United States Government, were not as careful about the statements to which they attached their signatures under oath as one might expect them to be, especially in view of their experience in the very service against which they are now apparently so willing to lend their efforts. The statements to which each made oath would, if true, impeach the records of this service at Port Townsend. Recognizing this fact, I made a careful examination of the customs records showing the ar-

rivals and clearings of vessels in the district of Puget Sound in April and May, 1897. The steamer "Tacoma" was shown to have
198 arrived at Tacoma on April 10, 1897, and to have cleared for the Orient on April 16, four days before Tang Tun is alleged to have been landed according to the endorsed papers presented by him. Furthermore, the said records showed that no other vessel of the same company was in the harbor at the time of the "Tacoma's" departure, nor until five days after said departure.

It is therefore evident, according to the customs records and applicant's own exhibit, that he could not have, as Messrs. Bowen and Brinker allege, remained on board the vessel on which he arrived until his case was disposed of, nor on any other vessel of the same company.

In the examination of the Port Townsend customs records for the period involved in order to verify or refute the statements of Messrs. Bowen and Brinker, I learned that there were two plans by which, as a rule, cases of Chinese aliens were disposed of, viz:

First. They were held on the ship on which they arrived until admitted or rejected, the former landing immediately, the latter returning to China on the same ship on which they arrived, or

Second. If their cases were not disposed of while the ships on which they arrived were in port, they were landed at Victoria, B. C., on the outward trips of the vessels, and would remain in British Columbia until notified of the disposition of their cases. If the decisions were favorable, they would come forward on local steamers and would be duly admitted; if adverse, the applicants would be notified that they had been rejected, and such entries would be made
199 in the records. My information on this point at first being somewhat uncertain, I verified it by conversations with Chinese members of the firm of Quong Tuck & Co., for many years Chinese agents for all Oriental steamship lines touching at Seattle, by an investigation conducted at Tacoma (p. 111 and 112), and finally by the testimony of Messrs. Bowen and Brinker themselves (p. 89 to 103).

There is still further verification in the fact that the Chinese passenger manifests of the Port Townsend office show that Chinese whose names appeared on arriving manifests of Oriental steamers subsequently appear on manifests of local vessels arriving from Victoria and Vancouver, but a careful examination of all such local steamer manifests from April 10 to May 25, 1897, failed to reveal the name of Tang Tun on any of them.

I would also request your attention to exhibit three (3). This is a typewritten list of the Chinese who arrived on the steamer "Tacoma" April 10, 1897, the said list having been prepared according to the custom prevailing in the office of Collector Saunders, by which such a list of each vessel's arrivals was used for the purpose of making memoranda as to the examination and disposition of each case, as it was considered by the collector of each ship. This document was found in the Port Townsend records. On the last page thereof you will note the name of "Tang Tung—son Quong Lee, born, Seattle,

rejected." On page 96 appellant's witness Mr. Bowen volun-
200 teers information concerning the customs by which this list was prepared, on page 97, identifies this list and states that the word "rejected" opposite the appellant's name is Mr. Saunders' writing.

The efforts of the appellant to prove by the testimony of Messrs. Bowen and Brinker that Tang Tun was not rejected at Port Townsend in 1897, as shown by the book records of Port Townsend office and exhibits 2 and 3 transmitted herewith, have therefore resulted merely in a strengthening of the Government's case on this point.

I would now respectfully request your attention to exhibits 4, 5 and 6:

Exhibit 4 is composed of the papers of Ah Toye, a Chinese fellow-passenger with Tang Tun on the steamer "Tacoma," which arrived at Port Townsend April 10, 1897. He was rejected on May 20, 1897, and on June 19, 1902, was admitted, one of his witnesses being Mr. S. F. Coombs, also a witness in the case of Tang Tun.

Exhibit 5 is composed of the papers of Gin Goon, another fellow-passenger of Tang Tun's on the steamer "Tacoma," arriving at Port Townsend April 10, 1897, and also rejected on May 20, 1897. As will be seen from the papers the said Gin Goon was admitted in July, 1903, by Chinese Inspector in Charge Thos. M. Fisher, after presenting a paper bearing an endorsement identical with that on the paper presented by Tang Tun, (exhibit 1), showing admission at the time the records show him to have been rejected. Please
201 note similarity of the papers in the case of Gin Goon to those in the case now under consideration.

Exhibit 6 is the paper of Teft Mun, still another fellow-passenger of the appellant Tang Tun on the steamer "Tacoma," arriving April 10, 1897. He also was rejected on the same day on which the appellant's rejection is dated, May 25, 1897; nevertheless, on February 22, 1905, he was arrested on the premises of the Wa Chong Co., in Seattle, and presented to the officers a paper bearing the alleged signature of J. C. Saunders, purporting to show his admission in April '97. United States Commissioner Kiefer of Seattle, on the testimony of officers of this service that the Port Townsend records showed rejection of Teft Mun, ordered him deported; appeal was taken, but was never perfected, and the order of Commissioner Kiefer was carried out on Sept. 6, 1905.

Of thirteen Chinese who were arrested in the Wa Chong building at the time of Teft Mun's arrest six were found to carry identification papers bearing the alleged endorsement of J. C. Saunders, all of which endorsements were in absolute conflict with the records of the Port Townsend office. All the cases were duly fought out before the United States Commissioner and all prisoners ordered deported. Their names were Ah Yuen, Teft Mun, Mah Chong, Chin Ming Tuck, Ah Sing and Chin Chung.

In examining the papers in exhibits 4, 5 and 6, please note that all the applicants who were concerned are shown to have been held in British Columbia pending decision of their cases. An en-
202 dorsement to the same effect will be found on the reverse side of exhibit 2 referring to Tang Tun the appellant.

With relation to the testimony introduced as proof of the appellant's claim that he was born in Seattle, I desire to concur in the opinion of the investigating inspector (pages 31, 32 and 107 to 110). If the testimony prepared, paid for and delivered as is indicated in the statements of witnesses Coombs (p. 21 to 27), Fitzhenry (p. 73 to 80) and Burritt (p. 81 to 88), must be accepted as sufficient evidence of a Chinaman's right to American citizenship, the officers of this service are practically powerless to refute any fraudulent claim which may be made in this direction. In this connection I believe the circumstances and testimony in the case of Gam Fong, recently before the Department from this office, should be considered, one of the witnesses of that case also being a witness in this.

I sincerely trust that it will be found possible to approve my action in this case and order the deportation of Tang Tun to China, the land wherein I firmly believe he first saw the light of day.

With relation to the case of Leung Kum Wui, the alleged wife of Tang Tun, I am satisfied as to the relationship claimed. It therefore follows that she must share whatever fate may befall her husband.

The first vessel on which the applicant can be deported sails from Vancouver, B. C., on September 7, 1906.

Respectfully,

H. EDSELL,
Chinese Inspector in Charge.

HBB.

203 [Endorsed:] No. 14610. Chinese 104. Department of Commerce and Labor, Immigration Service. Office of Chinese Inspector in Charge, Sumas, Wash. August 28, 1906. H. Edsell, Inspector in Charge. Subject: Transmitting Appeal Records in the Cases of Tang Tun and Lueng Kum Wui, and Recommending Dismissal. Department of Commerce and Labor. Received in Bureau of Immigration. Sept. 5, 1906, 9:50 A. M. Formally Acknowledged. No. of Inclosures, 7.

368. No. 14610. Chinese 104. Department of Commerce and Labor. Immigration Service. 315. Port, Sumas, Wash. Name, Tang Tun. Class, Citizen. Ret'd to China, Oct. 1, 1905. Arrived, Per S. S. "C. P. Ry." June 22, 1906. Manifest No. —. Remarks: Seattle, Wash. Denied July 5, 1906. Appealed July 6, 1906. Forwarded to Dep't —— —, 190–. Rec'd at Dep't and Formally Acknowledged Sept. 5, 1906. Dismissed Sept. 6, 1906. Decision Rec'd —— —, 190–

Filed in the U. S. District Court, Western Dist. of Washington. May 1, 1908. R. M. Hopkins, Clerk. A. N. Moore, Deputy.

No. 1633. U. S. Circuit Court of Appeals for the Ninth Circuit. Exhibit "A." Received Aug. 15, 1908. F. D. Monckton, Clerk.

204 [EXHIBIT "B."]

[*Affidavit of Simon Davis and Wm. B. Thompson, Dated November 4, 1896—Exhibit* 1.]

(Exhibit 1) A. C. C.

STATE OF WASHINGTON,
County of King, ss:

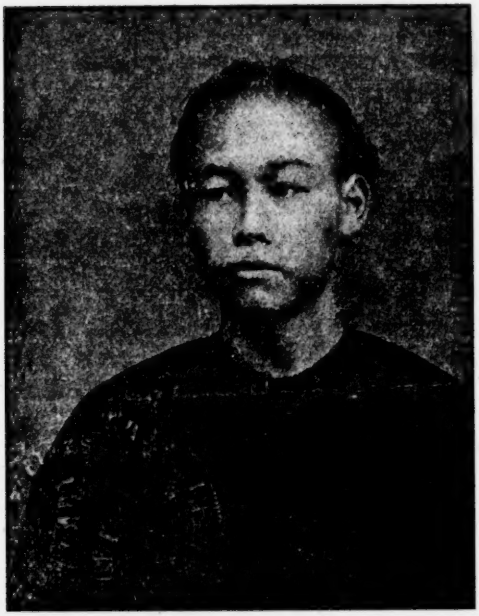
We, the undersigned, citizens and residents of Seattle for the past 25 years, being first duly sworn, on oath say; that we were well acquainted with Quong Lee, a Chinese merchant, who lived at South 3rd Street over the store of Quong Lee Lung Co.; that Quong Lee had a family of two children, one a boy, known as Tang Tun, who was born to Quong Lee and wife at said store building on South 3rd street, City of Seattle, sometime during the year 1879; that the said Quong Lee with wife and son and daughter, left for China in 1884; said son, Tang Tun, would now be about seventeen years of age; and the photograph hereto attached should be a good likeness of the boy Tang Tun, when seventeen years of age.

SIMON DAVIS.
WILLIAM B. THOMPSON.

Subscribed and sworn to before me this 4th day of November, A. D. 1896.

T. H. CANN.
Notary Public in and for the State of Washington, Residing at Seattle.

205



Arrived at Tacoma, Wash., Ap'l 10th, /97, on St'r "Tacoma," from China and admitted Ap'l 20, /97.

J. C. SAUNDERS,
Collector.

We, the undersigned business men of Seattle, do hereby certify, each for himself and not one for the other, that we have read the foregoing affidavit of Mr. Thorndike and Mr. Davis, and have reason to believe the same to be true; that a Chinese firm, known as Quong Lee Lung Co., merchants doing business at South 3rd Street, where a family lived until after the fire, in June, 1889, known as the Quong Lee family, having a boy and girl.

206 Dated at Seattle this — day of November, A. D. 1896.

____ ____.
____ ____.
____ ____.

[*Affidavit of Simon Davis and Wm. B. Thompson, Dated November 4, 1896—Exhibit 2.*]

STATE OF WASHINGTON,
County of King, ss:

We, the undersigned, citizens and residents of Seattle for the past 25 years, being first duly sworn, on oath say; that we were well ac-

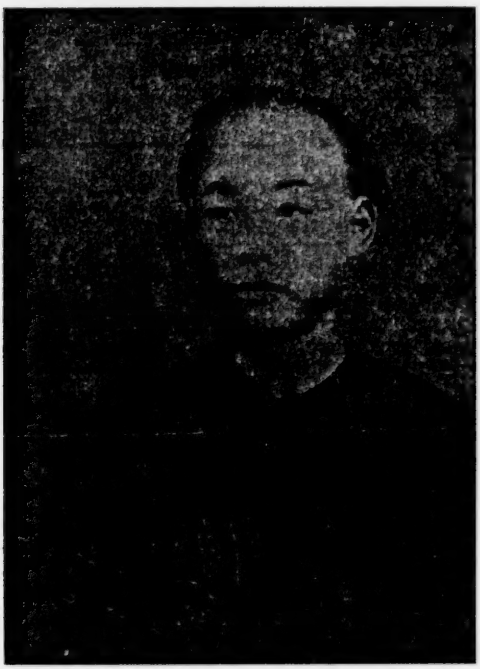
quainted with Quong Lee, a Chinese merchant, who lived at South 3rd Street over the store of Quong Lee Lung Co.; that Quong Lee had a family of two children, one a boy, known as Tang Tun, who was born to Quong Lee and wife at said store building on South 3rd street, City of Seattle, sometime during the year 1879; that the said Quong Lee with wife and son and daughter, left for China in 1884; said son, Tang Tun, would now be about seventeen years of age; and the photograph hereto attached should be a good likeness of the boy, Tang Tun, when seventeen years of age.

SIMON DAVIS.
WILLIAM B. THOMPSON.

Subscribed and sworn to before me this 4th day of November, A. D. 1896.

T. H. CANN,
Notary Public in and for the State of Washington,
Residing at Seattle.

207



Rejected May 25, /97.

J. C. SAUNDERS,
Collector.

We, the undersigned business men of Seattle, do hereby certify each for himself and not one for the other, that we have read the foregoing affidavit of Mr. Thorndike and Mr. Davis, and have reason to believe the same to be true; that a Chinese firm, known as Quong Lee Lung Co., merchants doing business at South 3rd Street, where a family lived until after the fire, in June 1889, known as the Quong Lee family, having a boy and girl.

Dated at Seattle this — day of November, A. D. 1896.

—— ——.
—— ——.
—— ——.

208 [*Affidavit of Wm. B. Thompson, Dated April* 10, 1897.]

STATE OF WASHINGTON,
County of King, ss:

William B. Thompson, being first duly sworn upon *h* his oath deposes and says; that he has been a resident of Seattle, Washington, for the past twenty-five years; that for a number of years he was one of the firm of Minick and Thompson doing a draying and trucking business in Seattle; that during the year from 1878 to 1882 said firm did the principal draying for the Chinese merchants of said City of Seattle; that a Chinaman named Quong Lee of the firm of Quong Lee Lung Co. lived with a Chinese woman said to have been his wife; that a son was said to have been born to them at South Third Street over the store of the said firm in 1879; that said Quong Lee and family left for China when said son was about five years old.

W. B. THOMPSON.

Subscribed and sworn to before me this 10th day of April, 1897.
[SEAL.] FRANK B. WIESTLING,
Notary Public in and for the State of Washington,
Residence, Seattle.

209 [*Affidavit of Simon Davis, Dated April* 17, 1897.]

Ap'l 20, 17-5′ 4¼″ 120, Large burns on face.

STATE OF WASHINGTON,
County of King, ss:

Simon Davis, being first duly sworn upon his oath deposes and says: that he has been a resident of Seattle, for the past twenty-five years and during a large portion of said time has been engaged in the clothing business; that during the year 1879 a Chinaman and Chinawoman lived at South 3rd street, Seattle; that said Chinaman was Quong Lee of the firm of Quong Lee Lung Co., merchants; that during the year 1879, a small child made its appearance at the

premises of the said Quong Lee; said child was known by the name Tong Tun, a boy and when about five years old his father and mother left for China taking said son.

SIMON DAVIS.

Subscribed and sworn to before me this 17th day of April, 1897.
[SEAL.] FRANK B. WIESTLING,
Notary Public in and for the State of Washington,
Residence, Seattle.

252. Rejected Minor Son. 12343. Tong Tun. Record "Tang" Tun. Minor Son. Son of Quong Lee of Seattle, Wash. Held at Vancouver, B. C. Rejected May 25, /97.

No. 252. 12343. Tang Tun, Alleged Minor Native Born
210 son of Quong Lee. Seattle, Wash. Minor Son Quong Lee. Held at Vancouver, B. C. (Tacoma). Rejected May 25, 1897. J. C. S. Port Townsend, Wash.

252. 12343. Tang Tun. Seattle. Rejected.

[Endorsed:] Exhibits 1 and 2. No. 14610. Chinese 104. Department of Commerce and Labor. Immigration Service. Port, Sumas, Wash. Name, Tang Tun. Class, Appeal Case.

Filed in the U. S. District Court, Western Dist. of Washington. May 1, 1908. R. M. Hopkins, Clerk. A. N. Moore, Deputy.

No. 1633. U. S. Circuit Court of Appeals for the Ninth Circuit. Exhibit "B." Received Aug. 15, 1908. F. D. Monckton, Clerk.

[EXHIBIT "C."]

[*Identification—List of Chinese.*]

Per Steamer "Tacoma."

TACOMA, WASH., *April* 10/97.

Portland.

21. King On=of Wing Wo Lung Co., 181 2d St. 26, 5′ 2″, 115. Large scar under chin.
21. Jo Lung=of Wing Lee Lung, 65 2d St. 25, 5′, 115. No marks. D. C. Loundsbury, E. L. Reyburn.
20. Lam Ping=Pow Hing, 183½ 2d St. 32, 5′, 4½″. No marks. W. C. Morgan, W. A. Jacobs.
20. Lee Kee Hong=Chung Yuen & Co., 146 2d St. 23, 5′, 4″. Scar on chin. D. C. Loundsbury, W. C. Morgan.
211 16. Wong Sai=Lee Sang Wo & Co., 191 2d St. 38, 5′, 6″. Left May, 1896. Robt. Holman, W. A. Jacobs.
21. Shung Kee=Sam Lung & Co., 128½ 2d St. 34, 5′, 5″, 135. Scar right cheek. E. L. Reyburn, Robt. Holman.
16. Woo You=On Kee Co., 64½ 2d St. 5′, 1½″, 43. No marks. Francis Brown, W. C. Morgan.

22. Chan Jan=Bow On & Co., 130½ 2d St. 26, 5′, 110. Large scar on right side head. W. K. Arnold, Francis Brown.
21. Yep Fay=Goey Hing Co., 125 2d St. 32, 5′, 6″. Scar on upper lip. Thos. Hawks, D. C. Loundsbury.
21. Fang Hing Dock=Hing Kee Co., 2d St., between Oak and Starke. 43, 5′, 3″. Much stooped.
21. Yee Young=Wing Wo Lung, 182 2d St. 32, 5′, 10½″, 189 lbs. Thos. Hawks & D. C. Loundsbury.
21. Yee Yuen=Quong Yuen Chong Co., 187 2d St. 30, 5′, 5″, 140.

Rock Springs, Wyo.

21. Goe Land=Wah On Fai Co., 64 Maine St. 28, 5′, 5¼″, 130. H. H. Edgar, O. Kindtons.
21. Yee Chong=How Wah & Co. 30, 5′, 2½, 120. M. Hodges, J. L. Dibles.
21. Sam Kee=Quong Yick & Co. Blind left eye. 32, 5′, 5¼″, 130 lbs. P. Masted & G. A. Adderson.
212 21. Sam Wing=Hing Long & Co. 28, 5′, 5″, 130 lbs. Scars on forehead. B. Jameson, H. H. Edgar.
21. Gun Jone=Quong Fat Kee & Co., 48 Main St. 28, 5′, 5″, 140. Scar center forehead. H. H. Edgar & Tim Kinney.
21. Gun Gong=Quong Lee Yuen & Co. 26, 5′, 5″, 130 lbs. H. H. Edgar, O. Kindtons.
21. Fay Moon=Quong Lee Yuen & Co. 32, 5′, 5½″, 140. Mole, right cheek. H. H. Edgar & Tim Kinney.
21. Hong Wong=Hing Chong Lee & Co. 30, 5′, 2½″, 126 lbs. No marks. Geo. Pickling, Chas. Mentonson.

Helena, Mont.

22. Chong Wing=Quang Wah & Co. 25, 5′, 7½″, 140 lbs. No marks.
21. Kong Gong You=Quong Mow Co. 5′, 3½″, 22, 150 lbs. A. J. Warren, J. E. Walker.
Gee Pan=Hing Long & Co., 160 Main St.
21. Wong Fung Quong=Kwong Cheung & Co. 24, 5′, 5″, 150. Mole on forehead, over left eye. W. L. Hunter.
22. Wong Suey=Quong Wo Lung, Main St. 31, 5′, 6¼″, 145. H. G. Baker.
21. Ung Lock=Quong Wo Lung. 45, 5′, 4″, 135 lbs. Scar on left side neck. Frank England, F. W. Cooper.

Missoula.

21. Ham Men Fong=Wing Chung Lung & Co. 36, 5′, 5″, 135. C. H. Worden, Thos. Marshall, Jos. Weed.
213 22. Ham Chee=Hing Kee Co. 28, 5′, 7″. Scar, right corner mouth. E. E. Spurting, Chas. E. Wood, Thos. Marshall.

21. Ah Sang=Hing Kee Co. 31, 5′, 7″, 135 lbs.
Hing Kee Co. M. L. Sanderson, F. J. Brown, E. R. Johnson.
22. Tong Guon=Tong Guon Co. 30, 5′, 9½″, 148. Large scar on left cheek.
24. Li Sing=Yuet Lung & Co. Admitted by Drum.
24. Ham Lung=Ju Lee Co. Admitted by Drum.

Boston.

17. Moy Knock Bond=Jim Gee & Co., 11 Oxford Place. 38, 5′, 6½″, 135 lbs.
17. Moy Sing Tong=Fook Sang Wo & Co., 9 Oxford Place. 38, 5′, 6″.
17. Chin Ark Quong=Shu Ying Tank & Co., 18 Harrison Ave. 36, 5′, 5½″. Scars around mouth.
17. Moy Wing Art=Fook Sang Wo & Co., 9 Oxford Place. 33, 5′, 6½″, 130.
17. Moy Quong Fate=Sun Lee Lung Co., 28 Harrison Ave. 31, 5′, 4″, 115 lbs. Front tooth missing.
21. Gong Fook Shing=Hang Lung Co., 16 Oxford Place. 30, 5′, 1½″, 120 lbs. Pockmark.
21. Lee Bark Dor=Quong Wing Sing Co., 11 Harrison Ave. 5′, 3½″, 31. Face badly scar-ed.
21. Wong Ah On=Hong Fah Low Co., 36½ Harrison Ave. 44, 5′, 4″, 130 lbs. E. D. Howard, 104 Harrison; J. W. Pratt, 76 Beach.
21. Lee Bak Ming=Quong Wah & Co., 9 Oxford Street. 31, 5′, 3½″, 115 lbs. Scar, forehead. W. E. Morrow, 13 Essex St.; F. G. Allston, 63 Franklin.
214 21. Goon Doo Toy=Shoo Ying Tank Co., 18 Harrison Ave. 31, 5′, 7″, 150 lbs. W. P. Goodrich, 40 Tyler St.; W. F. Morgan, 19 Harrison, member Shoo Ying Tank Co.
21. Wong Bark Doo=Quong Wah Lung Co., 24 Harrison Ave. 34, 5′, 5½″, 160 lbs. Mole over right eye. W. N. Hickey, 58 Beach St.; L. C. Perkins, 442 Worthington St.
21. Moy Bark Lok=Quong Tank Shing, 27 Harrison Ave. 37, 5′, 7″, 150 lbs. Quong Tank Shing & Co., E. W. Jones, 30 Court St.; F. P. Perry, 146 Eliot St.
17. Wong Han Foo=Quong Wah Lung Co., 24 Harrison Ave. 30, 5′, 6¼″, 120 lbs.
21. Wong Fook Shang=Bun Fong Low Co., 32 Harrison Ave. 31, 5′, 3″, 125. Pockmarked. Bun Fong Low, 32 Harrison; Chas. L. Taylor, 10 Essex St.; W. F. Kelly, 204 Harrison.
21. Joe Len Chong=Sung Wing & Co., 17 Oxford Place. 35, 5′, 9′, 205 lbs.
21. Goon Wah Duck=Quong Tank Shing, 27 Harrison Ave. 34, 5′, 3½″. Scar on each cheek.
22. Yee Nam Gin=Native-born. 16, 4′, 8½″. Mole on right cheek. Wilson Emery, 28 School St.

22. Way Yick Yee=Native-born. 12, 4′, 3½″. No marks. Geo. N. Brockerman, Geo. D. Andrews.
215 22. Yee Goy=native-born. 14, 4′, 5½″. Scar on left temple. Wilson Emery, F. A. Fisk.

Salem, Oregon.

Jeong Hing=Son of Low Hing Hong, 254 Liberty St., Salem. Held at Tacoma by order Secty. Treasury, pending opportunity to secure cert. of 1884.

Butte, Mont.

21. Dor Rock=Hang Chong & Co., 29, 5′, 2½″, 115 lbs. Scar left cheek. J. M. Peterson, Chas. A. Lewis.
21. Sam Hoy=Quong Lee Yuen & Co. 47, 5′, 2″, 125. No marks. J. M. Peterson & R. Adison.
21. Shin Jack=Hack Long Tai & Co. 35, 5′, 5″, 12 lbs. Scar on forehead. J. M. Peterson, P. O'Neil.
Soon Gong=Hing Long & Co. 30, 5′, 4¾″. Scar on bridge nose. C. M. Morrow, S. M. Perkins.
22. Quan Lung=Quong Lung Ching & Co. 30, 5′, 2½″, 140 lbs. Scar on bridge nose. Alex Johnson, C. H. Corbett, J. H. Wilkins.
21. Quan Hing=Quong Wah Sing & Co. 35, 5′, 5″, 130. T. A. Murry, Sam Twohy.
21. Kong Sai Chow, Sing Kee Co. 27, 5′, 5½″, 130. H. J. Fisher, J. K. Jamieson.
Ham Hum Gay=Wah Shang Lung Co. W. B. 4/15. 35, 5′, 8″.

216 Walla Walla, Wash.

21. Lee Hing=Lee Yuen & Co. 29, 5′, 5″, 130. Scar under left eye. S. C. Parker, C. H. Hanson.

Boise, Idaho.

Louis Hung Gong=Sang Chung & Co. 28, 5′, 4¾″. No marks. M. Ames, Jos. McAuliff.

Spokane, Wash.

21. Wing Fee=Sam Kee Co. 40, 5′, 8″. L. A. Anderson & H. B. Fenton.
Ah Toy=Son of Wong Dick, member Sung Chong Co. Rejected.
Li Sun Kee, Wah Yuen Co. 30, 5′, 6″, 125. W. C. Lewis & J. A. Edwards.
21. Chan Fat=Yuen Wo & Co. 18, 5′, 4⅓″, 130. Scars on left side forehead. M. B. Moore, J. W. Wilson.
21. Chin Ying. 42, 5′, 5″, 135. No marks. P. B. Johnson, J. F. Williams, C. T. Wingard.

Sacramento, Cal.

Louie Gen=Coon On Hong Co.
21. Gong Chong=Hip Hai & Co. 49, 5′, 2½″, 130 lbs. Scar on left side mouth. Gilbert Hall & W. C. Howard.

Chicago, Ill.

16. Moy Shoo=Hip Lung, 323 South Clark St. 33, 5′, 6″.

Washington, D. C.

16. Lee Hong=Quong Sang Lung Co., 314 Pennsylvania Ave., 37, 5′, 3″.

217 Baltimore, Md.

21. Chin Lem=Lee Yat. 46, 5′, 3″, 115. (Farmer and merchant.) Scar on left cheek. A. S. Miller, 160 Park Ave.
21. Der Kee. 27, 5′, 4″, 130 lbs. (Keeper restaurant.) Annis C. Higgins, 2016 N. Charles St., W. Camerdon, 2022 N. Charles St.

New York, N. Y.

16. Ng Yeck Goo=Wing Ong Co., 12 Pell St. W. B. 4/15. 37, 5′, 6″.
16. Ng Bok Fook=Quong Tuck Lung Co., 11 Mott St. W. B. 4/15. 35, 5′, 6″.
16. Kuam Hang=—— ——. 12 Pell St. W. B. 4/15. 38, 5′, 3½″.
17. Thom Mon Chok=Yee Hing Co., 20 Pell St. 26, 5′, 4″. Pock-mark-.

Olympia, Wash.

Lock Mow=Hong Yeck Kee Co. 49, 5′, 6½″. Weight, 145 lbs.
Lock You=Hong Yeck & Co. 35, 5′, 6″. Weight, 130 lbs.

Dillon, Mont.

21. Wong Knob=—— ——. Merchant. 43, 5′, 7½″, 155 lbs. No marks. Judson R. Holden, P. H. White & Otto Klemm.

Deer Lodge.

21. Hong Lin Faw=Hop Chon & Co. 30, 5′, 5″, 130. H. W. Higgins, O. J. Butler, G. M. Johnson.

218 Seattle, Wash.

17. Wang Quang Tung=Native-born (Portland) son of Wong Wing Choo, a member Quong Chong Co., 514 Washington St. 25, 5′, 4″, 120 lbs. Scar top forehead.
17. Chin Juk=Shing Chong & Co. 25, 5′, 3″, 125. Mole on chin

20. Teft Mun=born Renton, King Co. Rejected.
20. Ah Toye=son of Sue Sing, born Port Gamble. Rejected.
17. Bing Tung=Shing Chong & Co. 5′, 3½″, 29, 130. Prominent front teeth.
20. Tang Tung=son Quong Lee—born Seattle. Rejected.
17. Gin Goon=son Tuck Lee, born Port Gamble. 21, 5′, 6½″. Rejected.
17. Quong Fong=Yot Loy & Co. 45, 5′, 4½″, 130 lbs. Scar over left ear.

Laborers.

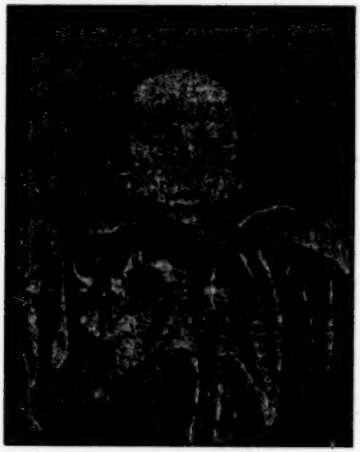
92. Tong Fook—Portland—Discharged Oct. 15/97. Admitted Apr. 15/97.
93. Joung Ling—Port Townsend. Admitted Apl. 15/97. J. C. S.
94. Tom Kee—Port Townsend. Admitted Apl. 15/97. By H. D. J. C. S.
Certificate provided by Act of July 6, 1884—# 41.
95. Huen Meng Cho,—Shing Hing, China. Student, W. B. 4/15. Age, 32. Hght. 5′, 2¾″.
Destination, Seattle.
Ging Quong.
219–248 Ah Yin.
Chin Foo-Gee.
Wah-See-Co.

[Endorsed:] No. 12244. S. S. "Tacoma," Apr. 10/97.
Exhibit 3. No. 14610. Chinese, 104. Department of Commerce and Labor. Immigration Service. Port, Sumas, Wash. Name, Tang Tun. Class, Appeal Case.
Filed in the U. S. District Court, Western Dist. of Washington. May 1, 1908. R. M. Hopkins, Clerk. A. N. Moore, Deputy. Ex. "C."
No. 1633. U. S. Circuit Court of Appeals for the Ninth Circuit. Exhibit "C." Received Aug. 15, 1908. F. D. Monckton, Clerk.

* * * * * * *

249 EXHIBIT "G."

[*Certificate of Marriage of Tang Tun and Leung Kum Mui.*]



Certificate of Marriage.

CONSULAR OFFICE OF THE UNITED STATES OF AMERICA,
CANTON, CHINA, *May* 21*st*, 1906.

I, Percival S. Heintzleman, Vice and Deputy Consul General of the United States at Canton, China, do hereby certify that,
250 on this 21st day of May, A. D. 1906, at the American Consulate General in the city of Canton, China, Tang Tun, aged 28 years, born in Seattle, Wash., and now residing in Seattle, Wash., and Leung Kum Mui, aged 20 years, born in Sun Ning, Kwang Tung Prov., China, and now residing in Sun Ning, Kwang Tung Prov., China, were united in marriage before me, and in my presence, by Rev. C. A. Nelson, who is authorized by the laws of the American Board Mission to perform such a ceremony.

In witness whereof I have hereunto subscribed my name and affixed the seal of my office at Canton, China, this 21st day of May, A. D. 1906, and of the Independence of the United States the 131st.

[SEAL.] P. S. HEINTZLEMAN,
Vice and Deputy Consul General of the United States of America.

Fee one dollar. To be issued in duplicate.

F 371. S.
#4317.

[*Examination of Leung Kum Wui—June* 23, 1906—*In re Application to Land.*]

OFFICE OF CHINESE INSPECTOR IN CHARGE,
PORT SUMAS, WASHINGTON, *June* 23, 1906.

A. S. No. 369.

In the Matter of the Application of LEUNG KUM WUI to Land in the United States as the Wife of Tang Tun, an Alleged Native-born Citizen of Seattle.

251 *Examination of Applicant.*

Arrived on the C. P. Ry. from Vancouver, B. C. June 22, 1906, having arrived at Vancouver June 20, 1906, on the Steamship "Empress of China."

Departed via —— on the Steamship ——, sailing from —— on —— — ——.

Age 20 years. Height — feet, — inches.
Physical marks: Face slightly *pox* marked.
H. Edsell, Chinese Inspector in Charge.
Eng Chung, Interpreter.
Charles C. Crouch, Stenographer.

[*Testimony of Leung Kum Wui—June* 23, 1906.]

And the said applicant, being first duly sworn, on oath, testified as follows:

Inspector EDSELL:

Q. What is your name?
A. Leung Kum Wui.
Q. Where were you born?
A. Shaw Hong Village, Sun Ning.
Q. How long did you live in Shaw Hong Village?
A. Until I was 19 years old.
Q. Where did you go then?
A. Then I was married to that gentleman there (indicating Tang Tun).
Q. Where were you married?
A. At Long Mee.
Q. How far is that from the village you lived in before?
A. About three miles.
Q. How did you go from your village to Long Mee?
A. I had a sedan chair which took me over.
Q. Who accompanied you?
252 A. My father and mother and the go-between woman.
Q. Who was the go-between?

A. I don't know her name.
Q. You say your father and mother were with you?
A. Yes, sir.
Q. When were you married?
A. Last year, 11th month and 4th day. (November 30.)
Q. Did your husband see you before you were married?
A. Yes, sir.
Q. Where?
A. He saw me at Shaw Hong Village.
Q. How many times?
A. About three times.
Q. Did he ever come over there and see you?
A. He came with the go-between and saw me.
Q. Did he talk with you?
A. Yes, sir.
Q. What did he tell you?
A. If I marry you I will take you to Seattle.
Q. Did he talk with your father and mother?
A. Yes, sir.
Q. Did they agree to the marriage?
A. Yes, sir.
Q. Where were you married in Long Mee?
A. At the big temple.
Q. Did you have a feast there?
A. Yes, sir.
Q. Where did you hold the feast?
A. I don't know anything about the feast.
Q. Did your husband give your parents a wedding gift?
A. Yes, sir.
253 Q. What was it?
A. You see my parents attended to the business and I don't know.
Q. How long did you stay in Long Mee after your marriage?
A. About five or six months.
Q. Where did you live?
A. In the middle of the village.
Q. Whose house was it?
A. It belonged to Tang Tun.
Q. Who else lived in it?
A. No one else.
Q. Hasn't Tang Tun any relatives there?
A. I don't know; I was a stranger.
Q. Didn't you see Tang Tun's father and mother while you were living in Long Mee?
A. Yes, I saw his mother.
Q. What was her name?
A. Chin Shee.
Q. Have you any brothers or sisters?
A. I have five brothers and two more sisters.

Q. What did you do before you were married when you were living in Shaw Hong?
A. My father; he is a farmer.
Q. Doesn't your father do any other kind of work?
A. He was a brick mason.
Q. When you left Long Mee, where did you go?
A. Went to the place where they make marriage.
Q. In what city was that?
A. Canton.
Q. Were you married again there?
A. Yes, they asked me "Is that your husband?" and I said "Yes."
254 Q. Who asked you?
A. I don't know, but white people.
Q. How many white people were there?
A. Two.
Q. Was one of them an officer?
A. Yes, I believe so.
Q. Did he have you stand up and go through a ceremony then?
A. Yes.
Q. Did you see any flags in that place?
A. I didn't notice any.
Q. Didn't you see any flags like that (indicating American flag on wall of room)?
A. I didn't notice them.
Q. Did either of those white men give you any paper?
A. I didn't pay any attention.
Q. During the time you lived in Long Mee were you a good woman?
A. Yes.
Q. Have you ever been married before?
A. No, sir.
Q. Are you going to live with your husband in Seattle?
A. Yes, sir.
Q. How do you know he is able to support you?
A. I know it.
Q. How do you know it?
A. My mother told me so.
Q. Do you know anyone in Seattle?
A. No, sir.
Q. What business has your husband in Seattle?
A. I know he has a business but I don't know what.
255 Q. What is the name of his business?
A. Wa Chong.
Q. Did your husband see your father and mother in Long Mee when they came with you?
A. Yes, sir.
Q. (Addressing husband who was present.) Why did you tell me Tang Tun that no one accompanied your wife when she came to Long Mee excepting the go-between?

A. I didn't see her father or mother.

LEUNG KUM WUI: I was sitting in the sitting chair and the covering was over me and I couldn't see anybody.

Q. I know, but you said your father and mother were with you?

A. I think so, but I didn't see them.

I hereby certify that the foregoing is a true and correct report of the examination of the above-named Chinese applicant for admission to the United States, taken by me in shorthand notes and subsequently transcribed into typewriting as above set forth.

CHARLES C. CROUCH,
Chinese Inspector.

I hereby certify that I have read the foregoing transcript of examination and that the questions therein are correct as interpreted by me from English into Chinese to the applicant, and that the answers therein are correct as by me interpreted from Chinese into English to the examining inspector.

ENG CHUNG,
Chinese Interpreter.

256 [*Order of Chinese Inspector Rejecting Application of Leung Kum Wui to Land.*]

OFFICE OF CHINESE INSPECTOR IN CHARGE,
PORT OF SUMAS, WASHINGTON, *July* 5, 1903.

Order Rejecting Leung Kum Wui.

The applicant applies for admission as the wife of a returning native-born citizen of the United States—Mr. Tang Tun. The alleged husband having this day been denied admission on the claim made, the rejection of the applicant as his wife must and does hereby follow.

H. EDSELL,
Chinese Inspector in Charge.

CCC.

[*Notice to Leung Kum Wui of Denial of Admission to the United States.*]

OFFICE OF CHINESE INSPECTOR IN CHARGE,
SUMAS, WASH. (DATE), *July* 5, 1906.

Mrs. Leung Kum Wui (Wife of Tang Tun).

No. 369.

Arrived June 22, 1906.

SIR: You are hereby notified that after due consideration of your case you have been denied admission to the United States. This

decision is not final; if you desire to avail yourself of the right of appeal to the Honorable Secretary of Commerce & Labor at Washington, through an attorney or responsible representative. You may communicate with such representative, or your friends, either by letters or telegrams sent through this office, but your written
257 notice of appeal must be filed within two days. Your signature and acknowledgment of the foregoing is requested.

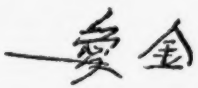
Respectfully,

H. EDSELL,
Chinese Inspector in Charge.

The foregoing interpreted to the applicant by me as official interpreter.

ENG CHUNG,
Chinese Interpreter.

(Date) July 5, '06.
(Acknowledged.)

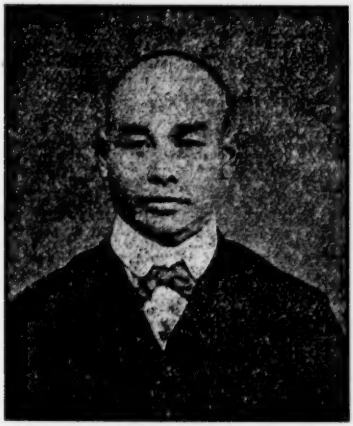


Applicant.

[Endorsed:] 369. No. 14610. Chinese. 104. Department of Commerce and Labor. Immigration Service. 316. Port Sumas, Wash. Name, Leung Kum Wui. Class, Citizen (Wife of). New Arrival. Arrived, Per S. S. "C. P. Ry." June 22, 1906. Manifest No. —. Remarks: Wife of Tang Tun. A. S. No. 368. Other Testimony and Exhibits Filed with Case of Tang Tun, her Alleged Husband. Denied, July 5, 1906. Appealed July 6, 1906. Filed in the U. S. District Court, Western Dist. of Washington. May 1, 1908. R. M. Hopkins, Clerk. A. N. Moore, Deputy. Ex. G. No. 1633. U. S. Circuit Court of Appeals for the Ninth Circuit. Exhibit "G." Received Aug. 15, 1908. F. D. Monckton, Clerk.

258 [EXHIBIT "I."]

[*Certificate of Marriage of Tang Tun and Leung Kum Mui.*]



Certificate of Marriage.

CONSULAR OFFICE OF THE UNITED STATES OF AMERICA.
CANTON, CHINA, *May 21st*, 1906.

I, Percival S. Heintzleman, Vice and Deputy Consul General of the United States at Canton, China, do hereby certify that, on this 21st day of May, A. D. 1906, at the American Consulate General, in the city of Canton, China, Tang Tun, aged 28 years, born in Seattle, Wash., and now residing in Seattle, Wash., and Leung Kum Mui, aged 20 years, born in Sun Ning, Kwang Tung Prov., China, and now residing in Sun Ning, Kwang Tung Prov., China, were united in marriage before me, and in my presence, by Rev. C. A. Nelson, who is authorized by the laws of the American Board Mission to perform such a ceremony.

259 In witness whereof I have hereunto subscribed my name and affixed the seal of my office at Canton, China, this 21st day of May, A. D. 1906, and of the Independence of the United States the 121st.

[SEAL.] P. S. HEINTZLEMAN,
Vice and Deputy Consul General of the United States of America.

Fee one dollar. To be issued in duplicate.

[Endorsed:] F. 371. S. #4317. Ex. "I." Filed in the U. S. District Court, Western Dist. of Washington. May 1, 1908. R. M.

Hopkins, Clerk. A. N. Moore, Deputy. No. 1633. U. S. Circuit Court of Appeals for the Ninth Circuit. Exhibit "I." Received Aug. 15, 1908. F. D. Monckton, Clerk.

260 United States Circuit Court of Appeals for the Ninth Circuit.

No. 1633.

HARRY EDSELL, Chinese Inspector in Charge at the Port of Sumas, Washington, for the United States Government, Appellant,

vs.

TANG TUN and LEUNG KUM WUI, Appellees.

In the Matter of the Application of TANG TUN and LEUNG KUM WUI for a Writ of Habeas Corpus.

Certificate of Clerk U. S. Circuit Court of Appeals to Printed Transcript of Record.

I, Frank D. Monckton, Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the foregoing two hundred and fifty-nine (259) pages, numbered from one (1) to two hundred and fifty-nine (259), inclusive, to be a true copy of the printed Transcript of Record upon appeal from the United States District Court for the Western District of Washington, Northern Division, in the above-entitled case as the original and copies thereof were printed under my supervision pursuant to the provisions of rule 23 of the rules of practice of the said the United States Circuit Court of Appeals for the Ninth Circuit, and as the said original remains of record in my office.

Attest my hand and the seal of the said the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California this seventeenth day of April, A. D. 1909.

[Seal United States Circuit Court of Appeals, Ninth Circuit.]

F. D. MONCKTON, *Clerk.*

261 U. S. Circuit Court of Appeals for the Ninth Circuit.

HARRY EDSELL, Chinese Inspector in Charge at the Port of Sumas, Washington, for the United States Government, Appellant,

vs.

TANG TUN and LEUNG KUM WUI, Appellees.

Upon Appeal from the United States District Court for the Western District of Washington, Northern Division.

Before Gilbert, Ross, and Morrow, Circuit Judges.

The appellees, who are Chinese persons, were denied admission into the United States after investigation by the inspector in charge

at the port of Sumas, in the State of Washington, and were by him ordered returned to China, whence they come. An appeal from the inspector's decision was taken to the Secretary of Commerce and Labor, and by that officer affirmed. While detained at Sumas in pursuance of the order of deportation, the appellees, through one Woo Gen, filed in the court below a petition praying for a writ of habeas corpus, in which petition it was, among other things, alleged that Tang Tun was born in the year 1879 at Seattle, in the then Territory of Washington, of Chinese parents who then resided and were permanently domiciled in that city; that, in the year 1884, he departed, with his parents, for the Empire of China, and remained there fifteen years; that in 1897 he returned to the United
262 States, and, after examination, was admitted thereto at the port of Port Townsend, State of Washington, by J. C. Saunders, then collector of customs there; that after being so admitted he entered the employment of the mercantile firm of Wah Chong Co., of the City of Seattle, and remained in such employment as a clerk and general assistant until 1903, when he acquired an interest in that firm, which he has ever since retained and now owns; that in September, 1905, he again returned to China for the purpose of getting married, and during that visit was in fact married, in accordance with the laws of China and the consular requirements of the United States, to the appellee Leung Kum Wui; that in June, 1906, he again returned to the United States and sought entry for himself and wife at the port of Sumas, State of Washington, which application was refused by the inspector; that thereafter an appeal was prosecuted from the said order of rejection to the Secretary of Commerce and Labor, and such proceedings were had thereon that the said order was in all things affirmed, in consequence of which the appellees were held by the said inspector at Sumas for deportation to China.

The petition for the writ further alleged, in effect, that the examination of the witnesses, designated by the petitioner as persons able to identify the appellee Tang Tun as a native born citizen of the United States, was conducted by the inspector during his ab-
263 sence, "so as to prevent said witnesses from completely and accurately identifying your petitioner as the person who had been born and acquired a permanent residence in the United States, and was further conducted by said inspector in such a manner as to prevent said witnesses from testifying as to the facts within their own knowledge, and said inspector failed and neglected to take in the proper manner, or at all, the testimony of the witnesses designated by your petitioner. That said inspector in charge, in arriving at the conclusions expressed in said order rejecting the application for admission of your petitioners, used and gave credance to, and placed reliance upon testimony of witnesses who were not sworn before giving testimony. That said inspector in charge, in order to reach the conclusion that your petitioners were not entitled to entry had recourse to and made use of secret documents, papers and files which were not made a part of the record when submitted to the

applicants for their examination, or to their counsel, and which were not, and could not be made a part of the record sent up on appeal to the Secretary of Commerce and Labor, but after being used by said inspector as aforesaid were secreted by him so as to prevent the fact of their illegal use being brought to the attention of the Secretary of Commerce and Labor on appeal. That in conducting the inquiry into the status of these applicants, said inspector abused the discretion reposed in him by the laws of Congress and the regulations of the Department of Commerce and Labor, in that he refused
264 to take in proper or legal manner, or at all, testimony of witnesses designated by these applicants, and in secretly making use of papers and documents outside the record, and disconnected therewith, and which were fictitious and false, and known to be such by said inspector at the time he had recourse to them. That for the purpose of influencing and prejudicing the mind of the Secretary of Commerce and Labor, and securing an affirmance of the order of rejection, said Inspector in Charge Edsell, after transmission of the record on appeal privately communicated with him the substance of the unsworn testimony used by him as aforesaid, and the documents, papers and records hereinabove referred to, and by reason of such communication, the said secretary affirmed the order rejecting the application of Tang Tun and Leung Kum Wui for admission, and thereby abused the discretion and authority vested in him by law, and the regulations of his department. That there are a number of well-known and reputable people in the City of Seattle, who are well acquainted with the applicant, Tang Tun, and with the fact that he is a native born citizen of the United States, and who, if they had been given an opportunity, would so testify, and on a further, fair, and impartial hearing by the inspector in charge would testify not only that said applicant was born in this country of parents then permanently domiciled here, but also that he was engaged in the City of Seattle for a number of years in mercantile pursuits, and while so engaged, acquired an inter-
265 est in the mercantile firm of Wah Chong Co."

The court below awarded a writ of habeas corpus, and the matter, subsequently coming on for hearing before the court, was submitted upon this written stipulation of the respective parties: "That the record herewith submitted, to-wit: The record in the appeal case of Tang Tun and Leung Kum Wui, from the files of the Bureau of Immigration and Naturalization of the Department of Commerce and Labor of the United States, certified to be such by F. P. Sargent, Commissioner General of Immigration, together with exhibits numbered 1 and 2, 3, 4, 5, 6, none of which were shown to applicant or his counsel and have never been exhibited to applicant or counsel, and the identification papers of the alleged wife, Leung Kum Wui, and the papers setting forth the marriage of the two applicants, is the original record of the hearing upon the application of the said Tang Tun and Leung Kum Wui to enter the United States as a native born citizen and wife, and the appeal thereon; that attached to said papers is a copy of a telegram from the Department

of Commerce and Labor at Washington, D. C., to the Immigration Service at Sumas, Washington, dismissing said appeal, and a letter corroborating said telegram; also a letter from H. Edsell, said inspector, stating that nothing other than the said telegram and letter corroborating same was received from the said Department of Commerce and Labor at Washington, D. C., relative to the dismissal of said appeal; that said record filed herewith, with the said
266 copy of telegram and letters shows every fact which the parties hereto deem necessary to present to the above-entitled court in the consideration by the said court of the allegations of the abuse of discretion; that the said parties hereto rely wholly upon said record and said telegram and letters referred to for the purposes of determination by the court of the question of abuse of discretion as alleged in said application for a writ of habeas corpus aforesaid, and the order of reference in this case to the United States Commissioner A. C. Bowman, is hereby modified in accordance with this stipulation.

"It is further stipulated and agreed, that should the above-entitled court, after examining the record filed herewith, find that there has been no abuse of discretion, as set forth in the petition for a writ of habeas corpus in the above-entitled case, that the said writ issued therein shall be dismissed, should the above-entitled court find abuse of discretion as alleged, then testimony in the said case shall be taken as provided for in the general order of reference."

The court below by its judgment discharged the appellees from custody, from which judgment the present appeal comes.

Ross, *Circuit Judge*, after stating the case as above, delivered the opinion of the court.

In the case of the United States vs. Ju Toy, 198 U. S. 253, it was adjudged by the Supreme Court that under the Chinese exclusion and the immigration laws, where a person of Chinese descent asks admission to the United States upon the ground that he is a native born citizen thereof, and the lawfully designated executive officer finds that he is not, such action should be treated by the courts
267 as having been made by a competent tribunal, with due process of law, and as final and conclusive in the absence of a showing that there was abuse of discretion on the part of such executive officers; and that in habeas corpus proceedings commenced thereafter and based solely on the ground of the applicant's alleged citizenship, the court should dismiss the writ, and not direct new and further evidence as to the question of citizenship.

In the subsequent case of Chin Yow vs. United States, 208 U. S. 8, the same court held, as we understand its opinion, that where such a person is given only a semblance of a hearing by the executive officers, and is by them arbitrarily denied an opportunity to prove his right to enter the country, a court should, by writ of habeas corpus, take jurisdiction of the case, in which event, the first question to be determined is, whether the petitioner has in fact been denied by the executive officers *a fair opportunity to present his case;* if not, the

court can proceed no further. The Supreme Court, in the Chin Yow case above referred to, further decided that the circumstance that the hearing before the executive officers may have been summary is of no consequence; that a denial of due process of law cannot be established by merely proving that the decision on the hearing that was had before such officers was wrong, and that jurisdiction in the courts can "not be established simply by proving that the commissioner and the Department of Commerce and Labor did
268 not accept certain sworn statements as true, even though no contrary or impeaching testimony was adduced."

Bearing in mind these rules of law by which we are, of course, controlled, we are to consider the statement embodied in the stipulation upon which the present case was submitted. That statement shows that Tang Tun was examined and testified at great length before the inspector at Sumas on the 23rd of June, 1906; that he was re-examined and testified at length before the inspector on the 27th of the same month; that on July 2nd, 1906, two witnesses—S. F. Coombs and William B. Thompson—were called, sworn and testified on behalf of the applicant Tang Tun; that on July 5th, 1906, the applicant for admission as a native born citizen was further examined by the inspector, when he was questioned, and answered as follows:

"Q. Tang Tun, can you explain to me why the records at Port Townsend should show that you were rejected in May, 1897, when you claim that you were admitted in April, 1897?

"A. I was examined and Saunders admitted me, but I don't know how he put it on the paper. I don't see how there could be two papers with his signature on, the one admitted and the other rejected.

"Q. Mr. Coombs and Mr. Thompson have been examined in your case, and their testimony is not satisfactory. Can you furnish any additional testimony as to your nativity?

"A. I was too small and only my mother knows it.

"Q. Don't you know anybody in the United States besides Mr. Coombs and Mr. Thompson who knows the facts concerning your birth?

"A. Do you want Chinese or white people?

269 "Q. I would prefer white people.

"A. I was too small, and don't know anybody. I might have known some one, but now it has been so long that I don't remember them now.

"Q. You told me that you believed you once had a sister. Was that sister born before you or after you?

"A. She was younger. (After a pause.) I don't know how it comes, but I think she was older than me. She was born before I was, but I am not sure.

"Q. How long did she live?

"A. I don't know. Some one told me, but I don't know myself.

"Q. Who told you?

"A. I forget."

It appears that the inspector then rejected the application of Tang Tun, as well as that of his wife, since her claim rested entirely upon that of the husband, in this order:

"The applicant presented at the time of his arrival at this port an identification paper setting forth that he had been admitted at Port Townsend, Washington, on April 20, 1897, as a native born citizen of the United States. He subsequently secured from Chin Quong, the manager of the Wa Chong Co., of Seattle, Washington, a copy of the identification papers on which the said commission was alleged to have been granted—the said copy bearing the following endorsement over the alleged signature of J. C. Saunders, Collector: 'Arrived at Tacoma, Washington, April 10th, '97, on Str. "Tacoma," from China, and admitted April 20, '97.' The applicant at first stated that this endoresement had been placed on his paper at the time of his admission, Collector Saunders having written it in his presence and handed the paper back to him. He afterwards testified, however, that he was mistaken in that statement, having recalled that he did not get the said endorsed paper until some time after his admission, when it was secured for him and given to him in the Wa Chong store by Chin Quong, the manager of the said
270 store, who had arranged for his coming to the United States.

"The records of the Port Townsend office contain the original of the endorsed paper secured by the applicant from the Wa Chong store, and such original bears the following endorsement: 'Rejected May 25, '97. J. C. Saunders, Collector.' This endorsement is supported by the other records of the Port Townsend office under case No. 12,343.

"It is a matter of record that another Chinaman and alleged native born citizen of the United States who was rejected at the same time by the Port Townsend office, having arrived on the same ship with the applicant herein, was subsequently found in the store of the Wa Chong Co., was arrested, and after due hearing of his case before the courts was ordered deported to China, and was so deported. Further, it is a matter of record that a number of other Chinese were arrested at the same time as the deported Chinaman above mentioned, all having been found in the Wa Chong store, and all having been in possession of 'native born citizen' papers bearing the alleged endorsement of Collector J. C. Saunders. Each was given due hearing before the proper courts, and each was deported to China by order of the court on a finding that the records of the Port Townsend office did not show the landing claimed.

"With a desire to treat the appellant justly, he has been given an opportunity to prove his claim of nativity, but has failed to furnish evidence which under the circumstances would justify his admission as a citizen of the United States.

"There appears in his application intimation that the applicant might make a claim that he had been a domiciled merchant in the United States. His own testimony as to his occupation prior to departing shows that during the three years immediately preceding his departure he was engaged chiefly as the driver of a wagon between

the Wa Chong gardens and the wholesale houses of Seattle, delivering vegetables and making his home at the gardens.

271 "The applicant is therefore denied admission on the grounds,

"First. That his status has already been adjudicated by officers duly charged with the enforcement of the Chinese exclusion laws:

"Second. Though given an opportunity to show that injustice may have been done by the former finding in his case, the applicant has failed to furnish any evidence to support such a conclusion;

"Third. The applicant has not furnished sufficient evidence of any status by which he is entitled to admission to the United States.

"H. EDSELL,
"Chinese Inspector in Charge."

On the same day the inspector notified Tun in writing of the denial of his application, saying in his letter:

"This decision is not final; if you desire to avail yourself of the right of appeal to the Honorable Secretary of Commerce and Labor at Washington, through an attorney or responsible representative, you may communicate with such representative, or your friends, either by letters or telegrams sent through this office, but your written notice of appeal must be filed within two days. Your signature and acknowledgement of the foregoing is requested."

Within the two days, to-wit, July 7th, Tun, through an attorney, took an appeal to the department at Washington from the decision refusing him admittance to the United States. The subsequent proceedings upon the appeal, disclosed by the record, are too voluminous to set forth in an opinion, but they show that on July 9th the attorney for Tun asked of and obtained from the inspector additional time, extending to July 20th, in which to take additional testimony in behalf of the applicant, and making in his letter this fur-

272 ther request: "that you send me an affidavit made in 1897, on which Tang Tun was admitted into the United States, by J. C. Saunders, Collector of Customs, at Port Townsend, Washington. It is absolutely necessary that I have that paper in order to intelligently present the facts of the case on the part of Tang Tun. I do not understand that that affidavits belongs to your files in the case, but in the event I am in error, will return the same to you as soon as testimony is taken."

This last mentioned letter was preceded by one from the inspector to the applicant's attorney, in which the inspector said:

"With reference to our telephonic conversation on July 6th, 1906, wherein you served upon me a verbal notice of appeal in the cases of Tang Tun and Leung Kum Wui, alleged native born citizen of Seattle and wife, respectively, I beg to call your attention to the fact that the written notice which you promised to forward me on Saturday has not yet arrived, nor have I received any formal written request for the additional time which you stated was necessary for the proper presentation of your clients' cases. I desire to give you every opportunity to prove the merit of the cases you represent, but

must insist that the routine requirements be observed, as otherwise the records would go to the department in an incomplete condition. Kindly forward at once the formal notice and request referred to."

On July 11th the inspector at Sumas wrote to the applicant's attorney this letter:

"J. C. Whitlock, Attorney at Law, Seattle, Washington.

"SIR: In compliance with your request over long distance
273 telephone of yesterday morning, I am forwarding to Inspector in Charge Estell, Seattle, the paper on which your client Tang Tun is alleged to have been landed at Port Townsend, Washington, in April, 1897, as a native born citizen. This action is taken in order that you may exhibit the said paper to a witness in behalf of your client, but you will not be permitted to remove the said paper from the custody of the officers of this service.

"In preparing your affidavits and other documents incident to prosecution of this appeal, I will appreciate it if you will submit them in duplicate so that one copy may remain on file in this office and the other be forwarded to the Secretary of Commerce and Labor.

"On the strength of your assurance in our telephonic conversation of yesterday morning that you would need until July 20th to complete the showing you desire to make in behalf of your clients, I have granted you until that date to perfect your appeals."

And on the same day the inspector at Sumas wrote to the inspector at Seattle this letter:

"W. B. Estell, Inspector in Charge, Seattle, Washington.

"SIR: I beg to inclose herewith the paper on which Tang Tun, now an appellant at this port from my decision denying him admission to the United States as a native born citizen of the United States, is alleged to have been admitted to the United States at Port Townsend in April, 1897. This paper is forwarded to your office at the request of the applicant's attorney and on his statement that he desired to exhibit it to a witness in order that the said witness could identify it in some manner. I have advised the said attorney—J. C. Whitlock—that he would not be permitted to remove the said paper from the custody of officers of this service, but that he would be permitted to see the paper in your presence and to exhibit it to his witness.

274 "The witness he spoke of over the long-distance telephone yesterday morning was one Walter Bowen, who, I believe, was at one time employed in the office of Collector J. C. Saunders in the capacity of chief clerk, special deputy collector, or some similar position. I anticipate, therefore, that it is the attorney's intention to try by Mr. Bowen to establish the genuineness of Mr. Saunders' signature. If on receipt of Mr. Bowen's testimony or affidavit, I find that my expectation is realized, I will return the papers to you for examination of Mr. Bowen as to the signature of Mr. Saunders on certain other documents in my possession.

"In this connection I beg to acknowledge receipt of your letter of

July 9th, 1906, No. 2109, advising me that you are endeavoring to locate the affidavit of some white witness as to Attorney Whitlock's connection with alleged 'Saunders' papers. I am glad that you are making careful search, as I believe the said affidavit will prove a valuable exhibit in the Government's case."

Additional testimony having been introduced on behalf of the applicant by C. W. Chamberlain, Walter Bowen, S. A. Brinker, J. C. Whitlock, Chin Quong, Robert Fitzhenry and Walter Burritt, within a further extension of time allowed by the inspection officers, and the whole case, including the additional testimony so taken on behalf of the applicants, together with exhibits numbered 1, 2, 3, 4, 5, and 6, referred to in the aforesaid stipulation of the parties, finally and in due course reached the Department of Commerce and Labor, and was there argued in writing on behalf of the respective parties. In the argument on behalf of the inspector exhibits 1, 2, 3, 4, 5 and 6 are thus described:

275 Exhibit 1 contained a photograph of Tang Tun, endorsed across the face thereof, "Arrived at Tacoma, Washington, Ap'l 10, '97, on steamer 'Tacoma' from China and admitted Ap'l 20, '97. J. C. Saunders, Collector."

Exhibit 2 *were* the original identification papers from the Port Townsend records presented by Tang Tun at the time of his application for admission in 1897, the same being numbered 12,343, and *are* the original copy of Exhibit 1, the photograph thereon being made from the same negative, but the endorsement across the face is, "Rejected May 25, '97, J. C. Saunders, Collector."

Exhibit 3 is a typewritten list from the Port Townsend records of the Chinese who arrived on the steamer "Tacoma" April 10, 1897, the said list having been prepared according to the custom prevailing in the office of Collector Saunders for the purpose of making memoranda as to the examination and disposition of each case, as it was considered by the collector on the ship, on the last paper of which list appears "Tang Tung—son Quong Lee, born, Seattle, rejected."

Exhibit 4 contains the papers of Ah Toye, a Chinese fellow passenger with Tang Tun on the steamer "Tacoma," which arrived at Port Townsend April 10, 1897. He was rejected on May 20, 1897, and on June 19, 1902, was admitted, one of his witnesses being Mr. S. F. Coombs, also a witness in the case of Tang Tun.

276 Exhibit 5 is composed of the papers in the matter of Gin Goon, another fellow passenger of Tang Tun on the steamer "Tacoma," arriving at Port Townsend April 10, 1897, and also rejected May 20, 1897. This exhibit also shows that Gin Goon was subsequently and in July, 1903, admitted upon a paper bearing an endorsement similar to that disclosed by Exhibit 1, showing the admission of Gin Goon at the time the records show him to have been rejected.

Exhibit 6 contains the papers in the case of Teft Mun, still another fellow passenger of the appellee Tang Tun on the steamer "Tacoma,"

arriving April 10, 1897. He also was rejected on the same day on which appellee's rejection is dated, May 25, 1897; nevertheless, on February 22, 1905, he was arrested on the premises of the Wah Chong Co., in Seattle, and presented to the officers a paper bearing the alleged signature of J. C. Saunders, purporting to show his admission in April, 1897.

The foregoing description of exhibits 1, 2, 3, 4, 5 and 6 *are* but the statement of their contents in the argument of the inspector, filed with the Secretary of Commerce and Labor.

In the brief of the attorney for the applicants filed with the Secretary of Commerce and Labor, we find the following:

"We find that the inspector in charge at Sumas found it
277 necessary, after delivering what might be termed a lecture to the appellant, apparently to justify himself for this order of rejection, proceeded to set out specific reasons therefor. The first of these reasons, namely, that the status of appellant had already been adjudicated by officials duly charged with the enforcement of the Chinese exclusion law, is rather hard to understand; what he means by it is rather hard to say. In the examination of Mr. Bowen, who was special deputy collector at the port of Port Townsend, under Mr. Saunders, we find the following:

"Q. I will show you a paper, and will ask you if that is his signature—Collector Saunders—upon which Tang Tun claims he was admitted by Collector Saunders in the year 1897, and will ask you if the signature across the face of it is that of Collector Saunders?

"A. I don't think there is any doubt about that.

"Q. Can you say positively that it is his signature?

"A. Yes, I would swear to it."

"The paper referred to is that presented by Tang Tun, and upon which he claims to have been admit-ed to the United States by J. C. Saunders, Collector of Customs, in 1897. (This paper shows arrival at Tacoma on April 10, 1897, admitted April 20, 1897.)

"There is another paper, however, in the case, which purports to show that the appellant herein arrived, admittedly, some time in the early part of the month of April, 1897, and was deported May 25, 1897. The testimony of Mr. Bowen clearly shows that there was no detention house for the keeping of Chinese, in the District of Puget Sound, at that time; that Collector Saunders used to board the steamers when they arrived at Port Townsend, and journey to Tacoma to the headquarters of the corporation (The N. P. Ry., at Tacoma, which was the only Oriental line operating directly out of the Puget Sound ports in those days. There being a substantial
278 conflict in the records, we have taken the testimony of Mr. **Bowen to endeavor to clear up** the discrepancies in these particulars as he was connected with the port Townsend office at that time.

"Summing up the entire evidence adduced in this case, it would seem to *be* an unbiased mind, all immaterial issues being eliminated, that Tang Tun has assumed the burden of proof in this case, and that the testimony in this case fairly preponderates on the side of

the appellant; this being the case he is certainly entitled to admission as a native born American citizen. The apparent reason of Inspector Edsell's rejection of this appellant, and the cause of his making his general and special findings of fact, is the fact, though the officer is unconscious of it, that his mind seems to be poisoned with an animus directed at Chin Quong, manager of the Wa Chong Co. We do not deny that the testimony given by appellant, and that given by Chin Quong, differs slightly in some particulars, still Honorable Secretary, you will agree with us when we say that oftentimes witnesses who are entirely honest in their statements, make numerous errors as to what occurred at a certain time and place several years removed, and matters which at the time of their occurrence were not considered particularly significant. The inspector in charge at Sumas, on the contrary, seems to hold the contra view, thinking it is necessary for these witnesses to corroborate each other in every small detail. It would seem to any person who is familiar with the practical methods employed in the enforcement of the Chinese exclusion law here, that owing to the fact that Seattle has a very small Chinatown, Tang Tun, if he had made a surreptitious entry into the United States would have fallen in the hands of the ever vigilant inspectors, and been promptly deported. On the contrary, it appears from the record and the testimony, that Tang Tun landed here in April, 1897, and remained here domiciled in the City of
279 Seattle all of the time up to the month of September or October, 1905, when he left the United States of his own volition for a visit to the Empire of China.

"After looking this case over thoroughly, and considering it from all standpoints, it is perfectly plain that the more likely side of the testimony is that given by the appellant and his witnesses. It therefore follows that error prejudicial to the rights of this appellant has been committed, and that the order of rejection and deportation made and entered in this case July 5, 1906, be reversed, vacated, and held for naught, and that Tang Tun be permitted to enter the United States, and again enjoy the inestimable heritage which is the right of every free born American.

"I wish now, very briefly, to consider the case of Leung Kum Wui, wife of appellant herein. I realize, of course, at the outset that this appeal will be predicated entirely upon the outcome of the appeal of Tang Tun, her husband, as she has no rights which do not come from him, and I claim none for her."

We have made the foregoing references to the proceedings before the executive officers in order to show that the hearing before them was neither summary nor arbitrary, and that so far from being a mere semblance of a hearing, it was a protracted one, based on repeated extensions of time requested by the applicants and on a very considerable quantity of evidence introduced by each side to the controversy. Under such circumstances we do not understand, in view of the law as declared by the Supreme Court in the cases hereinbefore referred to, that any court is authorized to review the action of the Department of Commerce and Labor in the matter of admitting or

weighing evidence, or to consider whether the conclusions drawn by its officers were right or wrong.

280 The judgment of the court below is reversed and the case remanded with directions to dismiss the proceedings.

(Opinion filed February 23, 1909. F. D. Monckton, Clerk U. S. Circuit Court of Appeals for the Ninth Circuit.

HARRY EDSELL, Chinese Inspector in Charge at the Port of Sumas, Washington, for the United States Government, Appellant.

vs.

TANG TUN and LEUNG KUM WUI, Appellees.

Appeal from the United States District Court for the *Washington* District of Washington, Northern Division.

Before Gilbert, Ross, and Morrow, Circuit Judges.

MORROW, *Circuit Judge,* (dissenting):

In my opinion the question in this case is a constitutional question, and for the reason stated in the case of Harry Edsell vs. Can Pon and Look Wing, number 1,625, I think the appeal should be dismissed.

(Dissenting Opinion filed February 23, 1909. F. D. Monckton, Clerk U. S. Circuit Court of Appeals for the Ninth Circuit.)

281 United States Circuit Court of Appeals for the Ninth Circuit.

No. 1633.

HARRY EDSELL, Chinese Inspector in Charge at the Port of Sumas, Washington, for the United States Government, Appellant,

vs.

TANG TUN and LEUNG KUM WUI, Appellees.

In the Matter of the Application of TANG TUN and LEUNG KUM WUI for a Writ of Habeas Corpus.

Appeal from the District Court of the United States for the Western District of Washington, Northern Division.

Decree.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Western District of Washington, Northern Division, and was duly submitted.

On consideration whereof, it is now here ordered, adjudged and decreed by this Court, that the judgment of said District Court in

this cause be, and the same is hereby, reversed, and the case is remanded to the said District Court with directions to dismiss the proceedings.

(Endorsed:) Decree. Filed and entered February 23, 1909. F. D. Monckton, Clerk.

282 United States Circuit Court of Appeals for the Ninth Circuit.

TANG TUN and LEUNG KUM WUI, Petitioners,
vs.
HARRY EDSELL, Chinese Inspector in Charge at the Port of Sumas, Washington, for the United States Government, Respondent.

Order.

The above cause coming on to be heard on stipulation of counsel for the respective parties above named, for a stay of issuance of Writ of Mandate herein, pending the hearing of a petition for a Writ of Certiorari about to be filed in the Supreme Court of the United States and of the hearing on said writ if granted,

It is now by the Court ordered, that the mandate of this Court do *not* issue to the Honorable District Court of the United States for the Western District of Washington, Northern Division, pending the hearing of the application of appellees above named for a Writ of Certiorari, and if granted, pending the hearing in said court on said writ, provided the said appellees shall prosecute their application diligently.

——— ———.

(Entered: April 5, 1909.)

283 United States Circuit Court of Appeals for the Ninth Circuit.

No. 1633.

HARRY EDSELL, Chinese Inspector in Charge at the Port of Sumas, Washington, for the United States Government, Appellant,
vs.
TANG TUN and LEUNG KUM WUI, Appellees.

In the Matter of the Application of TANG TUN and LEUNG KUM WUI for a Writ of Habeas Corpus.

Certificate of Clerk U. S. Circuit Court of Appeals to Proceedings and Record.

I, Frank D. Monckton, Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the foregoing twenty-two (22) pages, numbered from one (1) to twenty-two (22),

inclusive, to be a true copy of all proceedings had in the above-entitled case in the said the United States Circuit Court of Appeals for the Ninth Circuit as the same remain of record in my office, and that the same in connection with the preceding certified copy of the printed Transcript of Record in the above-entitled case constitute a true copy of the entire record therein.

Attest my hand and the seal of the said the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this seventeenth day of April, A. D. 1909.

[Seal United States Circuit Court of Appeals, Ninth Circuit.]

F. D. MONCKTON, *Clerk.*

284 UNITED STATES OF AMERICA, *ss:*

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the Honorable the Judges of the United States Circuit Court of Appeals for the Ninth Circuit, Greeting:

Being informed that there is now pending before you a suit in which Harry Edsell, Chinese Inspector in charge at the Port of Sumas, Washington, for the United States Government, is appellant, and Tang Tun and Leung Kum Wui are appellees, which suit was removed into the said Circuit Court of Appeals by virtue of an appeal from the District Court of the United States for the Western District of Washington, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said Circuit Court of Appeals and removed
285 into the Supreme Court of the United States, do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the first day of June, in the year of our Lord one thousand nine hundred and nine.

JAMES H. McKENNEY.
Clerk of the Supreme Court of the United States.

286 [Endorsed:] File No. 21,648. Supreme Court of the United States. No. 852, October Term, 1908. Tang Tun & Leung Kum Wui vs. Harry Edsell, Chinese Inspector, &c. Docketed. No. 1633. United States Circuit Court of Appeals for the Ninth Circuit. Writ of Certiorari. Filed Jun- 12, 1909.

287 In the United States Circuit Court of Appeals for the Ninth Circuit.

No. —.

HARRY EDSELL, Chinese Inspector in Charge at the Port of Sumas, Washington, Appellant,
vs.
TANG TUN and LEUNG KUM WUI, Appellees.

Stipulation.

Whereas, the above entitled cause is now pending in the Supreme Court of the United States on a Writ of Certiorari issued out of said court on the first day of June, A. D. 1909; and

Whereas, there is on file in the Supreme Court of the United States a certified transcript of the record in said cause,

It is now hereby stipulated by and between the Solicitor General of the United States, on behalf of Harry Edsell, Chinese Inspector aforesaid, and of the Government of the United States represented by him, and James A. Kerr, attorneys for the defendants in said cause, Tang Tun and Leung Kum Kui, who caused the said Writ of Certiorari to issue, that the certified transcript of record now on file in the Supreme Court of the United States shall be taken as a return to said Writ and that he may certify to the Supreme Court a copy of this stipulation as his return thereto.

Dated, Seattle, Washington, June 9th, 1909.

LLOYD W. BOWERS,
Solicitor General, for Appellant.
JAMES A. KERR,
Attorney for Appellee.

(Endorsed:) Stipulation of Counsel Relative to Return to Writ of Certiorari. Filed June 21, 1909. F. D. Monckton, Clerk U. S. Circuit Court of Appeals for the Ninth Circuit.

288 United States Circuit Court of Appeals for the Ninth Circuit.

No. 1633.

HARRY EDSELL, Chinese Inspector in Charge at *at* the Port of Sumas, Washington, for the United States Government, Appellant,

vs.

TANG TUN and LEUNG KUM WUI, Appellees.

In the Matter of the Application of TANG TUN and LEUNG KUM WUI for a Writ of Habeas Corpus.

Certificate of Clerk United States Circuit Court of Appeals to Stipulation of Counsel Relative to Petition to Writ of Certiorari.

I, Frank D. Monckton, as Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the next preceding page to be a true copy of a "Stipulation of Counsel Relative to Return to Writ of Certiorari," filed in the above-entitled cause on the 21st day of June, A. D. 1909, as the original thereof remains on file and of record in my office.

Attest my hand and the seal of the said the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this 21st day of June, A. D. 1909.

[Seal United States Circuit Court of Appeals, Ninth Circuit.]

F. D. MONCKTON, *Clerk.*

289 United States Circuit Court of Appeals for the Ninth Circuit.

No. 1633.

HARRY EDSELL, Chinese Inspector in Charge at the Port of Sumas, Washington, for the United States Government, Appellant,

vs.

TANG TUN and LEUNG KUM WUI, Appellees.

In the Matter of the Application of TANG TUN and LEUNG KUM WUI for a Writ of Habeas Corpus.

Return to Writ of Certiorari.

By direction of the Honorable the Judges of the United States Circuit Court of Appeals for the Ninth Circuit, I, Frank D. Monckton, as Clerk of the said Court, in obedience to the annexed Writ of Certiorari issued out of the Honorable the Supreme Court of the United States and addressed to the Honorable the Judges of the United States Circuit Court of Appeals for the Ninth Circuit, com-

manding them to send, without delay, to the said Supreme Court the record and proceedings in the above-entitled cause, do attach to the said Writ a certified copy of a stipulation entered into by and between the counsel for the respective parties to the said cause, the original of which stipulation is on file and of record in my office, and do hereby certify the said copy of said stipulation as due return to the said writ.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this 21st day of June, A. D. 1909.

[Seal United States Circuit Court of Appeals, Ninth Circuit.]

F. D. MONCKTON, *Clerk.*

290 [Endorsed:] File No. 21,648. Supreme Court U. S. October Term, 1910. Term No. 214. Tang Tun & Leung Kum Wui, Petitioners, vs. Harry Edsell, Chinese Inspector, &c. Writ of Certiorari & return. Filed June 28th, 1909.

291 In the Supreme Court of the United States.

No. 214.

TANG TUN and LEUNG KUM WUI, Relators,
vs.
HARRY EDSELL, Chinese Inspector, et al., Respondent.

Stipulation.

It is stipulated and agreed by and between James A. Kerr, attorney for Tang Tun and Leung Kum Wui, and the Attorney General of the United States representing the Respondent, Harry Edsell, Chinese Inspector, that in printing the record in the above entitled case there shall be omitted from the printed record certain proceedings certified from the United States Circuit Court of Appeals for the Ninth Circuit, contained between page 219 commencing with Exhibit "D," Affidavit of D. K. Howard, in re Ah Toye, to the bottom of page 248, all that part of said record having reference solely to the appeal of one, Ah Toye, the said printed portion of the record having no reference whatever to the case of Tang Tun, et al. vs. Edsell, Chinese Inspector.

JAMES A. KERR,
Attorney for Relators.
WILLIAM R. HARR,
Acting Attorney General,
Attorney for Respondent.

292 [Endorsed:] 4648. No. 214. In the Supreme Court of the United States. Tang Tun and Leung Kum Wui, Relators vs. Harry Edsell, Chinese Inspector, Respondent. Stipulation. James A. Kerr, Attorney for Relators, Seattle, Wash. 214/21648.

293 [Endorsed:] File No. 21,648. Supreme Court U. S. October Term, 1910. Term No. 214. Tang Tun and Leung Kum Wui, Petitioners, vs. Harry Edsell, Chinese Inspector, etc. Stipulation to omit part of the record in printing. Filed December 17, 1910.

IN THE

SUPREME COURT

OF THE

UNITED STATES

TANG TUN and LEUNG KUM WUI,
Petitioners.

vs.

HARRY EDSELL, Chinese Inspector in Charge at the Port of Sumas, Washington, for the United States Government,
Respondent.

No.....

PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

JAMES A. KERR,
SEATTLE, WASHINGTON

WASHINGTON, D. C.

Counsel for Petitioners.

IN THE

SUPREME COURT

OF THE

UNITED STATES

TANG TUN and LEUNG KUM WUI,
Petitioners.

vs.

HARRY EDSELL, Chinese Inspector in Charge at the Port of Sumas, Washington, for the United States Government,
Respondent.

No.....

PETITION FOR A WRIT OF CERTIORARI REQUIRING THE CIRCUIT COURT OF APPEALS TO CERTIFY TO THE SUPREME COURT FOR FOR ITS REVIEW AND DETERMINATION THE CASE OF TANG TUN AND LEUNG KUM WUI, HIS WIFE, PETITIONERS AND APPELLANTS AGAINST HARRY EDSELL, CHINESE INSPECTOR IN CHARGE AT THE PORT OF SUMAS, WASHINGTON, FOR THE UNITED STATES GOVERNMENT.

TO THE HONORABLE SUPREME COURT OF THE UNITED STATES:

The petition of Tang Tun and Leung Kum Wui, the petitioner Tang Tun being a native born citizen of the United States and his co-petitioner, Leung Kum Wui, his lawfully wedded wife, respectfully shows to this Honorable Court as follows:

I.

That your petitioner Tang Tun was born in the City of Seattle, Territory (now State) of Washington, in the year A. D. 1879, of Chinese parents who then resided and were permanently domiciled in said city. That from 1884 until 1897 he resided with his parents in China, whence they had returned. That on April 10, 1897, the petitioner Tang Tun, returned to the United States and was admitted on April 20th, 1897, as a native born citizen by J. C. Saunders, then collector of the port of Port Townsend. That he immediately thereafter entered the employ of the mercantile firm of Wa Chung & Company of Seattle and remained in their employ as a clerk and general assistant until 1903, when he acquired an interest in said firm of the value of $1000, which interest he has ever since retained and now retains. That during all this residence his whereabouts was known to the Immigration Officers. (Record, p. 108.)

II.

That in September, 1905, he returned to China for the purpose of being married, and was there married in accordance with the laws of China and in conformity with the consular requirements of the United States, to his co-petitioner Leung Kum Wui, June 22d, 1906, and with her forthwith returned to the United States and sought entry at Port Sumas, State of Washington, for himself and wife, which application was denied by the respondent Harry Edsell, the inspector in charge of said port. (Record, p. 258.)

III.

That preliminary to his departure petitioner Tang Tun, made application for leave to visit China, and filed in support thereof the affidavits set forth at pages 73 to 76 of the record, and was permitted by respondent Edsell to visit China for that purpose. (Record, p. 194.) That your petitioners were married in China, as above set forth, the certificate of said marriage being set forth at page 258 of the record.

IV.

That the hearing before the respondent, said Edsell, was of a purely summary and star-chamber character, the said inspector having arbitrarily used and given credence to and relied upon purely hearsay evidence, the letters and statements of sundry per-

sons not under oath, and upon alleged documents unauthenticated, and refused to and did not furnish petitioners nor their counsel any opportunity to examine or cross-examine the various and sundry persons whose statements he took in form of letters or after conversation with them as such witnesses, nor did said inspector give your petitioners an opportunity to meet or controvert such hearsay and incompetent testimony and statements relied on by said inspector, the existence of which was not known to these petitioners nor to their counsel until after the return of the record from the Department of Commerce and Labor, as hereinafter set forth. The documents, hearsay evidence and incompetent matter herein referred to used and relied upon by said inspector are as follows:

(a) Alleged statement of Thomas M. Fisher, Jr., containing evidentiary matter and not made under oath. (Record, pp. 107 to 109.)

(b) The order of rejection (Record, pp. 110 to 112) which shows that the inspector claimed to have examined certain records at Port Townsend and undertook to recite what they purported to show, and to state, not under oath, that other Chinese arriving on the same ship and subsequently found in a store in Seattle, were arrested and deported, after due hearing.

(c) A letter from respondent Edsell to one Estill. (Record, p. 114.)

(d) Letter from respondent Edsell to one Estill. (Record, pp. 118-119.)

(e) Letter from Hammer to Inspector Edsell. (Record, pp. 121-122.)

(f) Letter from Inspector Edsell to one Estill. (Record, pp. 135-139.)

(g) Letter from Fisher to Estill relating conversation with other customs officers. (Record, pp. 176-180.)

(h) Letter from Inspector Edsell to one Fulton, and reply thereto. (Record, pp. 180-181.)

(i) Letter of Inspector Edsell to Secretary of Commerce and Labor (Record, pp. 204-207), containing various statements, not under oath, in support of which no testimony was offered. (Exhibits 3 to 5, hereinafter referred to.)

V.

That in conducting said inquiry said inspector grossly abused his discretion in the manner in which the same was conducted and particularly in refusing to give credence to the positive proofs of citizenship submitted to him and in secretly securing and furnishing to the Department of Commerce and Labor

a large amount of hearsay and wholly incompetent matter; and in addition thereto, said inspector for the purpose of securing an affirmance of his order, and after the record of appeal had been made up, and forwarded to the said Department, secretly and without knowledge of your petitioners or their counsel communicated to the Department the substance of unsworn testimony, the substance of mere rumors and immaterial matter used by him, and copies or alleged copies of alleged public records, thereby showing his arbitrary, unfair and gross unfitness to pass upon the constitutional rights of your petitioners.

VI.

That from the order of said inspector rejecting your petitioners they perfected an appeal to the Honorable Secretary of Commerce and Labor. That the record reached the Honorable Secretary of Commerce and Labor September 5th, 1906. That the appeal was *dismissed* the next day and the telegram announcing that fact reached Edsell at 3:35 o'clock P. M. September 6th, 1906. (See Record, page 31.) That said telegram was as follows:

"Appeal Tang Tun and Leung Kum Wui dismissed. Murray." Which telegram is referred to in the opinion of the District Court hereinafter set forth.

VII.

On September 15, 1906, Woo Gen on behalf of these petitioners, applied for a writ of habeas corpus to the United States District Court for the Western District of Washington, Northern Division. Thereafter a hearing was had and your petitioners were discharged, the court holding:

1. That the inspector, respondent Edsell, acted arbitrarily and unfairly, and that his decision was contrary to the facts proven and was based upon incompetent testimony.

2. That the inspector was prejudiced to such an extent that he disregarded the uncontradicted testimony of credible witnesses.

3. That the Department of Commerce and Labor had also acted arbitrarily and had failed to consider said case properly or at all, as hereinabove set forth.

VIII.

From this decision the Government prosecuted an appeal to the United States Circuit Court of Appeals for the Ninth Circuit, where the same was heard and finally determined by a divided court on February 23d, 1909, said Court reversing the District Court and ordering the habeas corpus proceedings to be dismissed. A certified copy of the entire record of

the said case in the Circuit Court of Appeals is herewith furnished as part of this petition, in conformity with Rule 37 of this Honorable Court relative to cases from the Circuit Court of Appeal, and the same is marked "Exhibit A".

Your petitioners are advised and believe that the judgment of the said United States Circuit Court of Appeals in said case was erroneous and that this Honorable Court should require the said case to be certified to it for its review and determination under and in conformity with the provisions of the Sixth Section of the act of Congress entitled "An Act to Establish Circuit Courts of Appeal and to Determine and Regulate in Certain Cases the Jurisdiction of the Courts of the United States and for other purposes," approved March 3d, 1891, the said case being made final in the said Circuit Court of Appeals by said act.

The decision of the Honorable Court of Appeals is erroneous for the following reasons and in the following particulars:

(a) Your petitioner, Tang Tun, a native born citizen of the United States, was certainly entitled to a fair hearing upon the question of his nativity before an impartial tribunal. The rules gave him a right of appeal to the Honorable Secretary of the Department of Commerce and Labor. This appeal the peti-

tioners duly perfected (see Record, Exhibit "A") and by virtue of a full compliance with the rules relating thereto they were entitled to have their case reviewed and determined by the Honorable Secretary upon the facts. Their appeal, however, was summarily dismissed without any assigned cause and in violation of their rights, as shown by the following telegram, which is the only record from the Secretary's office, if indeed it emanated from that source:

"Washington, D. C., 3:35 P. M. Sept. 6, '06.
Immigration.
Sumas, Wn.
Appeal Tang Tung and Leung Kum Wui dismissed.
MURRAY."

(See Record, page 31, Exhibit "H," part of Exhibit "A.")

Of this record Judge Hanford says:

"If there is error in the opinion of this court with respect to the prejudice and unfairness of the inspector, still the contestants have sustained the charge made against the Government, because, under the law, they were entitled to have the case reviewed by the Secretary of Commerce and Labor, and when appealed to, his decision constitutes the final determination of the rights of an alien Chinese person to come into this country. An appeal was taken in this case and the only response to it appearing by the record was the following telegraphic message: "Appeal Tang Tun and Leung Kum Wui dismissed. Murray." There being positive testimony uncontradicted, which if carefully analyzed and fairly considered would have justified a reversal of the inspector's decision, I am bound to understand the telegram as being literally true, indicating that the case did not

receive any consideration whatever by the Secretary of Commerce and Labor, but some officer of the Department, acting for or in place of the secretary, refused to entertain the appeal and arbitrarily, without deigning to assign a reason, dismissed it, and I must conclude that a man who by competent evidence has established a right to enjoy liberty to come and go freely in his own country, and to the protection which the Constitution of the United States guarantees, has been denied such a hearing by the officers of the Government as the laws enacted by Congress provide for, and by reason of such denial this court is obligated to exercise its power for his protection." (Record, p. 42.)

The Honorable Circuit Court of Appeals (see its opinion attached to record, Exhibit "A") absolutely ignored the fact that the appeal prosecuted by the petitioners to the Secretary was never heard on its merits or considered by him. They quote from the inspector's examination of the petitioner, Tang Tun, as follows:

"Q. Mr. Coombs and Mr. Thompson have been examined in your case and their testimony is not satisfactory; can you furnish any additional testimony of your nativity?

A. I was too small, and only my mother knows it.

Q. Don't you know anybody in the United States besides Coombs and Thompson, who know the facts concerning your birth?

A. Do you want Chinese or white people?

Q. I would prefer white people.

A. I was too small. I don't know anybody. I might have known someone, but now it has been so long that I don't remember them now."

From this examination the Honorable Circuit Court of Appeals concluded that the petitioners had not brought themselves within the decision of this Honorable Court in *Chin Yow vs. United States.* In other words, the Honorable Court of Appeals construed the Chin Yow case to hold that if the Chinese applicant for admission is afforded a hearing before an inspector alone, the Secretary of Commerce and Labor refusing to hear his appeal, he may be expatriated by the *ipse dixit* of that individual, no matter how biased, prejudiced and arbitrary he may have been; no matter whether he had any capacity to decide in a legal and proper way questions of law or fact; no matter whether he rejected absolutely uncontradicted and unimpeachable testimony or not; no matter whether he had any support in law or evidence for his action. That the liberty of a citizen should be permitted to rest upon such a contingency, if it does so rest in fact, seems to us a sad commentary upon the laws to which we look for protection.

In the Ju Toy case the petitioner, upon returning from China, claimed to have been born in the United States, and sought to land. He had a hearing before the immigration officers and was denied admission. He prosecuted an appeal to the Secretary of Commerce and Labor before whom a hearing was had, and the order of the officers was duly af-

firmed. The entire proceeding was regular in form. There was neither alleged nor shown any abuse of authority in that case. The question certified to this court was whether Toy "came within the restrictions of the Chinese Exclusion Act because born in and a citizen of the United States" and "does not allege nor show in any other way unlawful action or abuse of their discretion or powers by the immigration officials who excluded him." This court assumed that "no abuse of authority of any kind is alleged." "It (the petition), disclosed neither abuse of authority nor existence of evidence not laid before the Secretary." The court then said: "The broad question presented is whether or not the decision of the Secretary of Commerce and Labor is conclusive."

In the Chin Yow case both the immigration officers and the Secretary of Commerce and Labor passed upon the applicant's right to enter. In that case the petitioner alleged that he had been prevented by the officers from obtaining testimony on his own behalf, and that had he been permitted he could have produced overwhelming testimony that he was native born. This court then say:

"If one alleging himself to be a citizen is not allowed a chance to establish his right in the mode provided in those statutes, although that mode is intended to be exclusive, the statutes cannot be taken to require him to be turned back without more. The decision of the Department is final, but that is on the

presumption that the decision was after a hearing in good faith, however summary in form."

The hearing contemplated by the laws is not the perfunctory investigation of a petty collector of a village on the Canadian border, but an ultimate hearing on appeal by the Secretary of Commerce and Labor. While such hearing may be to some extent summary, we do not believe the rules contemplate it shall be other than regular upon evidence properly authenticated and introduced in such a way as to permit the applicant for admission to test its credibility. The individual whose liberty or expatriation is the issue certainly ought to have the chance to cross-examine witnesses, examine alleged public documents or have them produced and duly proven, and should have an issue of such great importance to him heard before a fair, unbiased and impartial tribunal.

The rules established by the Secretary in conformity with the Act of September 13, 1888, provide for an appeal and "a final decision by the Secretary." The District Court correctly held that by the dismissal of their appeal the petitioners' rights were violated; that the inspector had acted throughout the investigation arbitrarily; that he was prejudiced and unfair, and that for these reasons the case did not fall within the rule announced in the Ju Toy case.

In *United States vs. Sing Tuck*, 24 Sup. Ct. Rep. 662, this court held that the provision of the Act of August 18, 1894, as follows: "In every case where an alien is excluded from admission to the United States under any law or treaty now existing or hereafter made, the decision of the appropriate immigration or customs officers, if adverse to the admission of such alien, shall be final, unless reversed on appeal to the Secretary of the Treasury" applied to a decision on the question of citizenship and that even if it be true that the statute could not make that decision final the consequence drawn by the Circuit Court of Appeals did not follow and was not correct in that case. In that particular case part of the Chinese seeking admission had claimed to be native born, but none of them had offered any other evidence in support of the claim. This court then say:

"As to whether or not the act could make the decision of an executive officer final upon the fact of citizenship, we leave the question where we found it."

We have been unable to discover that this court has in any subsequent decision passed upon the question directly as to whether the decision of the immigration official is final in the event the Secretary should fail to act when an appeal is prosecuted directly to him. The language in announced decisions of this court, however, indicates that the applicant for admission is entitled to have the decision of the im-

migration officer reviewed. That that is his right is manifest from the language of the court in *Fok Yung Yo vs. United States,* 22 Supreme Court Reporter, 686, in which case the action of the collector was sustained in refusing an applicant for admission permission to traverse the United States for the reason that the act made no provision for an appeal. But even in that case it is intimated that there might be some recourse if the action was arbitrary.

(b) The decision of the Honorable Circuit Court of Appeals is erroneous in holding that the inspector upon the certified record and the stipulation therein contained was not shown to have acted in an arbitrary way in rejecting the uncontradicted evidence and the testimony of numerous witnesses and the authenticated certificates showing that Tang Tun was native born.

When Tun left for China in 1905 for the purpose of getting married, the respondent Edsell made an endorsement upon his identification papers establishing his identity (see Exhibit "A," p. 194, brief of Edsell to Department of Commerce and Labor). Tun held a proper certificate of admission, bearing the genuine signature of J. C. Saunders, the collector of customs at Port Townsend at the time it was issued to him. He was a witness in his own behalf at the time he and his wife applied for admission and offered the

testimony of six or seven white witnesses, four of whom testified to his nativity. The Government offered no sworn testimony of any character whatever.

The inspector was the court. He examined all the witnesses behind closed doors. Claiming to have learned that some record in the office of the collector at Port Townsend,—which was never authenticated,—showed that the applicant had been rejected by the same collector whose certificate he bore, he refused him admission. On appeal this inspector sent up with the record numerous letters written by himself to third parties and their alleged answers. He attached unauthenticated alleged passenger lists of steamship upon which Tun returned to the United States. He accompanied this record with a long argument (see Exhibit "A," pp. 194 *et seq.*) containing statements as to what he claimed he found or was informed was contained in the record at Port Townsend; statements as to what he claimed he learned were customs existing in 1897 in handling Chinese at the port of Port Townsend. He attached to this record certain exhibits, being unauthenticated copies of alleged records, which he claimed showed that Tun had been rejected in 1897; that other Chinese coming over on the same vessel had been admitted by Saunders, afterward arrested in Seattle, tried and deported, and concluded said brief by urging the Department to sustain

him. The Honorable Court of Appeals quotes from these self-serving declarations of the inspector, none of which were known to your petitioners or their counsel until the return of the record on appeal from the Immigration Department, and concluded that the inspector did not act arbitrarily.

To all these immaterial and improper matters contained in these letters and unsworn statements neither the petitioners nor their counsel were afforded any opportunity to meet, either by evidence or by way of argument. We take it that any court acts arbitrarily when it shuts it eyes to legal evidence, and banishes a citizen on the alleged ground that the court had knowledge *de hors* the record that made him suspicious of the proofs submitted, notwithstanding petitioners' evidence was uncontradicted, unimpeached and overwhelming in effect.

The inspector also attached to that record, without knowledge of the petitioners or their counsel, reports of other cases coming before him. In his zealous anxiety to prevent petitioners entering the United States this inspector in his brief on appeal says:

"In this connection I believe the circumstances and testimony in the case of Gam Fong, recently before the Department from this office, should be considered, one of the witnesses in that case being a witness in this."

Among the witnesses for petitioners were two employees of the Government in the immigration service, to-wit: Bowen and Brinker. These gentlemen testified to the genuineness of the signature of Collector Saunders to the certificate admitting Tang Tun in 1897. Because they did so, and without attempting to question the correctness of their testimony, this inspector,—this court,—excoriates them in his brief for telling the truth. In a letter (see record Exhibit "A," p. 114) written to one Estill while the matter was being heard by him in July, 1906, this inspector reflects on the character of Attorney J. C. Whitlock, who was then about to appeal from his decision to the Department of Commerce and Labor, and intimates in that letter that Mr. Whitlock had "connection with Saunders' papers." For some reason he placed this letter in the record on appeal.

This Honorable Court cannot read the exhibit without being satisfied that Judge Hanford was correct in his conclusion (see his opinion, Record, p. 35, Exhibit "A") that the inspector had grossly abused his powers, that he was biased, prejudiced, and unfair throughout, not only in the hearing before him but in his efforts to prejudice the action of the cause on appeal.

This court found in *Hong vs. United States,* 24 Supreme Court Reporter, 517, that the Chinese or-

dered to be deported had adduced testimony which established the fact that they were bona fide merchants within the meaning of the law at the time registration was required of laborers by the act of Congress, and as the orders of deportation were made upon the sole ground that the appellants failed to show that fact, the judgments should be reversed. In that case the actual finding of the immigration officer was, in our judgment, no stronger than the actual report of the facts found in this case, as set forth in the brief of respondent Edsell to the Department of Commerce and Labor. (See Record, p. 94.)

(c) In the hearing of this case in the Circuit Court of Appeals Judge Morrow dissented upon the ground that that court was without jurisdiction to hear and determine the cause, maintaining that the appeal should have been prosecuted direct from the District Court to this court.

In examining the decisions of this court upon that subject, we do not find that the question has been specifically raised or passed upon. We do find, however, that in nearly all of the cases which have been up for review in this court the appeal has been directly from the District Court to this court. It is our contention that the Circuit Court of Appeals erred in assuming jurisdiction for the reason that the sole question at issue in the habeas corpus proceeding

was the constitutional right of the petitioners to enter and remain in the United States.

WHEREFORE, your petitioners respectfully pray that a writ of certiorari may be issued out of and under the seal of this court directed to the United States Circuit Court of Appeals for the Ninth Circuit, commanding said court to certify and send to this court on a day certain to be therein designated, a full and complete transcript of the record and all proceedings of the said Circuit Court of Appeals in the said case therein entitled "In the Matter of the Application of Tang Tun and Leung Kum Wui for a Writ of Habeas Corpus, Harry Edsell, Chinese Inspector in Charge of the Port of Sumas for the United States Government, Appellant, Tang Tun and Leung Kum Wui, Appellants. No. 1633," together with a full transcript of the record therein, to the end that the said cause may be reviewed and determined by this court as provided in Section 6 of the Act of Congress entitled "An Act to Establish Circuit Courts of Appeal and to Determine and Regulate in Certain Cases the Jurisdiction of the Courts of the United States, and for Other Purposes," approved March 3d, 1891, and that your petitioners may have such other and further relief or remedy in the premises as to this court may seem appropriate; and that

the said decree of the said Court of Appeals may be reversed by this Honorable Court.

TANG TUN and
LEUNG KUM WUI.

JAMES A. KERR,
Their Counsel.

.....

Of Counsel.

STATE OF WASHINGTON,
COUNTY OF KING, } ss.

TANG TUN and LEUNG KUM WUI, being each first duly sworn, upon oath depose and say: That they are the petitioners aforesaid; that they have had read to them the foregoing petition and that they believe the facts therein stated to be true.

TANG TUN.
LEUNG KUM WUI.

Subscribed and sworn to before me this 20 day of April, A. D. 1909.

(Corporate Seal) H. M. RAMEY, JR.,
Notary Public in and for the State of Washington, residing at Seattle.

I hereby certify that I am of counsel for the petitioners named in the foregoing petition for writ of certiorari; that I have read the same, know the contents thereof, and believe the same to be true; and in

my opinion the foregoing petition is well founded in law.

Dated March 15th, 1909.

JAMES A. KERR,
Counsel for Petitioners.

IN THE SUPREME COURT OF THE UNITED STATES.

TANG TUN and LEUNK KUM WUI,
Petitioners,
vs.
HARRY EDSELL, Chinese Inspector in Charge at the Port of Sumas, Washington, for the United States Government,
Respondent.
No. 1633.

MOTION FOR WRIT OF CERTIORARI.

Now come Tang Tun and Leung Kum Wui, by the undersigned, their counsel, and move this Honorable Court that it shall, by a writ of certiorari directed to the Honorable Judges of the United States Circuit Court of Appeals for the Ninth Circuit, require said judges of said court to cause to be certified to this court for its review and determination, a certain cause in said Court of Appeals lately pending, wherein the said Tang Tun and Leung Kum Wui were appellees and Harry Edsell, Chinese Inspector in Charge at the Port of Sumas, Washington, for the United States Government, was appellant, numbered in said court 1633, and to that end they now tender herewith their petition and brief, with a certified copy of the entire record in said cause in said Circuit Court of Appeals.

JAMES A. KERR,
Counsel for Petitioners.

.....
Of Counsel.

IN THE SUPREME COURT OF THE UNITED STATES.

TANG TUN and LEUNK KUM WUI,
Petitioners,
vs.
HARRY EDSELL, Chinese Inspector in Charge at the Port of Sumas, Washington, for the United States Government,
Respondent.
No. 1633.

NOTICE OF APPLICATION TO SUPREME COURT FOR WRIT OF CERTIORARI.

To the UNITED STATES OF AMERICA, and to ELMER E. TODD, its Attorney:

You and each of you are hereby notified that the above-named petitioners will, on ....., the ..... day of ....., 1909, at ..... o'clock, ... M., upon the coming in of the Supreme Court of the United States, upon their verified petition and copy of the entire record in this case, submit to the Supreme Court of the United States, in its court room in the capitol in the City of Washington, District of Columbia, their motion and petition for an order granting a writ of certiorari in the above-entitled case, directed to the United States Circuit Court of Appeals for the Ninth Circuit, requiring said Court to certify to said Supreme Court of the United States the entire record in cause numbered 1633, lately pending in said Circuit

Court of Appeals, wherein these petitioners are appellees and Harry Edsell, Chinese Inspector in Charge of the Port of Sumas, Washington, for the United States Government, is appellant, a copy of which motion and of the petition for writ of certiorari and of the brief in support thereof are herewith delivered to you.

JAMES A. KERR,

.....

Of Counsel.

In the Supreme Court of the United States.

OCTOBER TERM, 1908.

TANG TUN AND LEUNG KUM WUI, petitioners,
v.
HARRY EDSELL, CHINESE INSPECTOR IN charge at the port of Sumas, Wash., for the United States Government, respondent. } No. 852.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

I.

The record in this case shows that in June, 1906, the petitioner, Tang Tun, sought admission into the United States at the port of Sumas, State of Washington, together with his wife, Leung Kum Wui, as a returning native-born citizen of the United States. They were both denied admission by the respondent, Harry Edsell, Chinese inspector in charge at that port, after a hearing had been accorded them, and were ordered returned to China, whence they came. An appeal was taken to the Secretary of Commerce and Labor, who affirmed the order of the deportation.

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Application was then made by petitioners to the District Court of the United States for the Western District of Washington for a writ of habeas corpus. The writ was allowed by Judge Hanford, who, upon a hearing of the case, ordered petitioners to be discharged from the custody of the respondent. Upon appeal, the judgment of the District Court was reversed, and the case remanded with direction to dismiss the habeas corpus proceedings.

II.

Under the decisions of this court in *United States* v. *Ju Toy* (198 U. S., 253) and *Chin Yow* v. *United States* (208 U. S., 8), the only question before the District Court, upon the application for a writ of habeas corpus, was whether the petitioners were denied a proper hearing by the immigration authorities. Thus, in the latter case, the court said (p. 11):

> Of course if the writ is granted the first issue to be tried is the truth of the allegations last mentioned. *If the petitioner was not denied a fair opportunity to produce the evidence that he desired, or a fair though summary hearing, the case can proceed no farther. Those facts are the foundation of the jurisdiction of the District Court, if it has any jurisdiction at all.* It must not be supposed that the mere allegation of the facts opens the merits of the case, whether those facts are proved or not. And, by way of caution, we may add that jurisdiction would not be established simply by proving that the

> commissioner and the Department of Commerce and Labor did not accept certain sworn statements as true, even though no contrary or impeaching testimony was adduced. * * *

An examination of the record in this case, as well as of the carefully prepared opinion of the Circuit Court of Appeals, will show that the petitioners were accorded a full and fair opportunity to present all the evidence that they desired to adduce in their behalf before the immigration officers, and that their right of appeal to the Secretary of Commerce and Labor was preserved.

The District Court, however, in order to pass upon the merits of the case, assumed that a telegraphic message from the Department of Commerce and Labor, which read, "Appeal Tang Tun and Leung Kum Wui dismissed, Murray," meant "that the case did not receive any consideration whatever by the Secretary of Commerce and Labor, but some officer of the Department, acting for, or in the place of the Secretary, refused to entertain the appeal and arbitrarily, without deigning to assign a reason, dismissed it" (Rec., 42–43).

This assumption was entirely unwarranted, as appears from the petition for a writ of *habeas corpus* itself, which states (Rec., 4):

> That thereafter an appeal was prosecuted from said order of rejection to the Secretary of Commerce and Labor at Washington, D. C., *and such proceedings were had that said order appealed from was in all things affirmed.*

The brief filed on behalf of the petitioners in the Circuit Court of Appeals indicates that their counsel understood the meaning of the word "dismissed" as used in the telegram referred to. Thus, referring to the alleged improper introduction of certain evidence by the inspector, they stated (brief, pp. 11, 12):

> This matter undoubtedly had considerable influence upon the inspector *and upon the Sectary in reaching the conclusion that they did reach.* * * * The appellees had no knowledge of it at the hearing before the inspector or before the Secretary. The introduction of all this matter referring to other Chinese cases could have had but one purpose in view, *and that was to prejudice the Secretary in reaching his decision, and it had the desired effect.*

In the face of the statute expressly giving an appeal to the Secretary of Commerce and Labor in such cases, it seems absurd to suppose that that department would undertake to deny such right of appeal. As a matter of fact, such appeals are always entertained and carefully though promptly disposed of, the word "dismissed" being customarily used in the sense of "affirmed."

III.

The petitioners claim that the inspector used and gave credence to certain incompetent evidence, specifically referred to on pages 5 and 6 of the petition. The record shows that the papers referred to were part of the official records of the immigration service.

It is not understood that the immigration authorities, while affording a Chinaman full opportunity to present all the evidence desired in his behalf, are denied the privilege of resorting to other proper sources for information on the subject of his right to enter the country. No better source for such purpose could exist than the official records which were referred to in this case. Nor was it necessary that the Government should introduce such records with all the formalities required in a judicial proceeding. Thus, in *The Japanese Immigrant Case* (189 U. S., 86), the court, in holding that administrative officers, when executing the provisions of a statute involving the liberty of persons, may not disregard the fundamental principles that inhere in "due process of law" as understood at the time of the adoption of the Constitution, said (p. 101):

> One of these principles is that no person shall be deprived of his liberty without opportunity, at some time, to be heard, before such officers, in respect of the matters upon which that liberty depends—*not necessarily an opportunity upon a regular, set occasion, and according to the forms of judicial procedure, but one that will secure the prompt, vigorous action contemplated by Congress*, and at the same time be appropriate to the nature of the case upon which such officers are required to act.

IV.

If petitioners were accorded a fair hearing by the immigration authorities within the meaning of the

adjudications of this court, the correctness of their decision is not, under the authorities cited, subject to review on *habeas corpus*. In regard to the merits of the case, however, it may be said that the principal controversy was whether the immigration authorities should accept the evidence furnished by the original identification papers of Tang Tun on file at Port Townsend, Wash., which bore the inscription "Rejected May 25, '97, J. C. Saunders, Collector," or that furnished by an alleged copy of said papers, which bore the inscription: "Arrived at Tacoma, Washington, April 10th, '97, on Str. *Tacoma*, from China, and admitted April 20/97."

It was a matter of record that another Chinaman, an alleged native-born citizen of the United States, had been rejected by the Port Townsend office at the same time as Tang Tun appeared to have been rejected, he having arrived on the same ship with Tang Tun. This Chinaman was subsequently found in the store of the Wa Chong Company, in which it was alleged that Tang Tun had been employed from 1897 to 1903, and, after due hearing before the courts, ordered deported to China. It was also a matter of record that a number of other Chinamen were arrested at the same time as the one above mentioned, all having been found in the Wa Chong Company store, and all having been in possession of "native-born citizen" papers bearing the alleged indorsement of Collector J. C. Saunders. Each of said Chinamen, after due hearing before the courts,

was ordered deported on the finding that the records of the Port Townsend office did not show the landing claimed. (Rec., 8–9.) Under all the circumstances, therefore, the immigration inspector decided to accept the record of the Port Townsend office as to Tang Tun's rejection on May 25, 1897, rather than the alleged copy of said record purporting to show his admission.

The inspector, however, gave Tang Tun an opportunity to prove his claim of nativity, notwithstanding the record of rejection in 1897, and also considered the question whether he might properly claim to be a domiciled merchant in the United States. In the latter connection the inspector found (Rec., 9–10):

> His own testimony as to his occupation prior to departure shows that during the three years immediately preceding his departure he was engaged chiefly as the driver of a wagon between the Wa Chong gardens and the wholesale houses of Seattle, delivering vegetables, and making his home at the gardens.

The inspector therefore denied Tang Tun admission on the following grounds (Rec., 10):

> First. That his status has already been adjudicated by officers duly charged with the enforcement of the Chinese exclusion laws.
>
> Second. Though given an opportunity to show that injustice may have been done by the former finding in his case, the applicant has failed to furnish any evidence to support such a conclusion.

IN THE

SUPREME COURT

OF THE

UNITED STATES

OCTOBER TERM, 1910

TANG TUN and LEUNG KUM WUI, *Petitioners,* *vs.* HARRY EDSELL, Chinese Inspector in Charge at the Port of Sumas, Washington, for the United States Government.	No. 214.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

PETITIONERS' BRIEF

JAMES A. KERR,
Attorney for Petitioners.
Seattle, Washington.

PETITION FOR CERTIORARI FILED MAY 1, 1909, CERTIORARI AND RETURN FILED JUNE 28, 1909.

(21,648)

IN THE

SUPREME COURT

OF THE

UNITED STATES

OCTOBER TERM, 1910

TANG TUN and LEUNG KUM WUI, *Petitioners,* *vs.* HARRY EDSELL, Chinese Inspector in Charge at the Port of Sumas, Washington, for the United States Government.	No. 214.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

PETITION FOR CERTIORARI FILED MAY 1, 1909, CERTIORARI AND RETURN FILED JUNE 28, 1909.

(21,648)

The petitioners are husband and wife and were married at the American Consulate, Canton, China, May 21, 1906. (Rec. 130.)

Tang Tun was born in Seattle, Washington, November 25, 1879. His father was Quong Lee, a Chinese merchant and a member of the firm of Quong Lee Lung Company. He went with his parents to China in 1884 and remained there until 1897, when he returned to the United States on the Steamship "Tacoma" and was admitted by Hon. J. C. Saunders, Collector of the port of Port Townsend, Washington, April 20th, 1897, upon affidavits of two white witnesses, Simon Davis and William B. Thompson, showing that he was born in the City of Seattle and that his father was a resident merchant therein at the time of his birth. (Rec. 114-115-117-118). Immediately after his admission in 1897 Tung entered the employ of a Chinese firm in Seattle, Washington, known as Wa Chong & Company and remained in the employ of that firm as a clerk and general assistant until 1903, when he acquired an interest in the firm to the extent of $1,000, which interest he has ever since owned and now owns. During this residence and up to the time of his return to China in September, 1905, his whereabouts was known to Chinese Inspector Thomas M. Fisher, Jr. (Rec. 23-46-48-57-60-85-99-100).

In September, 1905, Tun, desiring to return to China for the purpose of marrying his co-petitioner,

presented to respondent Edsell the affidavits of two white witnesses as to his birth in Seattle, and that of a Chinese witness as to his ownership in the mercantile firm of Wa Chong & Company (Rec. 41-43-109). These affidavits informed Edsell and the Government he represented:

1. That Tun was born in Seattle in 1879.

2. The exact place where he was born, to-wit, over the store of Quong Lee Lung Company, old Third Avenue South.

3. That Quong Lee, a member of the firm of Quong Lee Lung Company, was his father.

4. That he had been taken back to China by his parents in 1884, and had returned to the State of Washington, and was admitted by the then Collector of Customs at Port Townsend on April 20, 1897.

5. That since his return he had been identified with Wa Chong & Company, in which firm he had acquired an interest of the value of $1000.

6. That he desired to return to China for the purpose of being married and bringing his wife to the United States, and tendered his identification papers to the respondent to enable him to so return.

With all these facts before him, respondent Ed-

sell endorsed these identification papers with his own official signature and gave them back to Tun and sped him on his way. Had the respondent Edsell at that time informed the petitioner Tun that if he left the country for the purpose of marrying his co-petitioner he would be refused admission upon his return, the status of Tun in the event the Department of Commerce and Labor had sought to have deported him, would have been very different from that which now obtains. But, however that may be, the petitioner Tun, after having lived for eight years in the City of Seattle, where he was engaged as a merchant and his whereabouts known to the Government Inspector, treated his own government with the utmost candor and good faith in making his application for leave to return to China for the purpose of marrying.

After his identification papers had been thus endorsed by respondent Edsell, Tun returned to China, was there married, and returned with his wife to the port of Sumas, from which he had departed on June 22d, 1906, and presented to respondent Edsell the same identification documents which Edsell had endorsed on October 1st, 1905. Instead of admitting the petitioners Edsell placed both in the detention shed at Port of Sumas, one hundred miles from home,

Third. The applicant has not furnished sufficient evidence of any status by which he is entitled to admission to the United States.

It is respectfully submitted that there was no error in the judgment of the Circuit Court of Appeals in this case, and that the petition for a writ of certiorari should be denied.

LLOYD W. BOWERS,
Solicitor-General.

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and there confined them until September 17th, 1906, when they were released on bond by order of the United States District Court.

The record shows (see pp 44 et seq) that on June 23d, 1906, Edsell subjected the petitioner Tun to a star chamber examination. This first examination seems to have been conducted through an interpreter. On June 27th, 1906 (Rec. 52) Tun was subjected by Edsell to a further examination without an interpreter.

On June 2d, 1906, two of petitioner's witnesses, Coombs and Thompson, were examined at Seattle by Thomas M. Fisher, Jr., an immigration inspector, and on July 5, 1906, Tun was again examined by respondent Edsell, without an interpreter at the detention station at Sumas. On June 23d, 1906 (Rec. 125) respondent Edsell also examined, through an interpreter, the petitioner's wife. (Rec. 125-128).

On July 5th, 1906, after the examination of the two petitioners and of the white witnesses, Edsell entered an order denying both petitioners admission, upon the following grounds:

1. That Tun's status had been theretofore adjudicated by officers duly charged with the enforcement of the Chinese Exclusion laws.

2. Though given an opportunity to show that injustice may have been done by *former finding* in his case, the applicant has failed to furnish any evidence to support such a conclusion. (In this connection the former finding refers, unquestionably, to a certain record or alleged record at Port Townsend, to which the attention of the Court will be hereafter called).

3. The applicant has not furnished sufficient evidence of any status by which he is entitled to admission to the United States, and denying his wife the right to enter upon the ground that he had theretofore refused to admit the husband as a native born citizen.

From this finding an appeal was prosecuted to the Department of Commerce and Labor. (Rec. 65 et seq). In preparing the case for hearing on appeal it was discovered that the respondent Edsell had undertaken to deny the petitioner's right to admission for the reason that he claimed to have learned that while he, Tun, held a certificate of admission in the handwriting and bearing the true signature of Hon. J. C. Saunders, Collector of Customs at Port Townsend, under date of April 20th, 1897, the record in the office of the Collector at Port Townsend contained an

entry upon the duplicate of the paper which Saunders gave to the petitioner Tun, as follows: "Rejected May 25, 1897."

The respondent took the ground that the *burden of proof was on the petitioner to explain the discrepancy between the record at Port Townsend and the certificate delivered by Saunders to Tun.* This is manifest from the examination of Tun on July 5th, 1906. Edsell, after making the discovery—we presume, thus questioned Tun: (Rec. 62).

Q. Tang Tun, can you explain to me why the records at Port Townsend should show that you were rejected in May, 1897, when you claim that you were admitted in April, 1897?

A. I was examined and Saunders admitted me, but I don't know how he put it on the paper. I don't see how there could be two papers with his signature on, the one admitted and the other rejected.

In the subsequent proceedings there was filed with Edsell the affidavits of Chin Quong (Rec. 71) showing the financial interest of Tun in the Wa Chong Company, and the affidavits of Walter Bowen and S. A. Brinker, both of whom were for many years in the immigration service, and both engaged in the office of Collector Saunders at Port Townsend in April, 1897, and both of whom testified that the certificate of admission issued by Saunders to the petitioner Tun was genuine and was in the handwriting

throughout of the then Collector. There were also filed the affidavits of Burritt, Fitzhenry, Whitlock and Chamberlain, showing that Tun had been identified with the Wa Chong Company since 1897.

Thereafter respondent Edsell caused the testimony of Fitzhenry, Burritt, Brinker and Chin Quong to be taken by the Immigration Inspector at Seattle, and this testimony is found on pages 79 to 99 of the record. The government took no testimony.

The testimony taken before the inspector shows conclusively that Tun was a native born citizen of the United States; that he went to China with his parents in 1884, returned to the United States and was admitted as a native born citizen by the Collector of Customs at Port Townsend in 1897, and resided in Seattle until he returned to China to marry his co-petitioner in 1905, and that his whereabouts was known to the Immigration Inspector during that time.

At page 109 of the record, which is the brief of Edsell on appeal to the Department of Commerce and Labor, he states:

"The applicant's departure from the United States in October, 1905, was established by an endorsement across the face of his identification papers made by me at the time of his departure."

The cause reached the Department of Commerce and Labor on appeal on the 5th day of September, 1906, and at 3:35 P. M. on September 6th, 1906, a telegram was received by respondent Edsell—not from the Secretary of Commerce and Labor, but from one Murray—as follows:

"3:35 P. M.
Washington, D. C., Sept. 6, '09.
Immigration, Sumas, W'n.
Appeal Tang Tun and Leung Kum Wui dismissed.
Murray."

And that is the only record of what took place in the Department of Commerce and Labor.

The respondent Edsell not only used and gave credence to and relied upon a vast amount of purely hearsay evidence and unauthenticated documents and statements by persons not under oath, but surreptitiously certified up these same matters to the Secretary of Commerce and Labor with the manifest purpose of prejudicing that tribunal, should it see fit to review his action.

Edsell acted throughout in the most unfair and arbitrary way, and it appears, as we shall more fully show, that he was prejudiced and did not intend, under any circumstances, and no matter what the facts, to admit these petitioners to the United States; that

he refused to consider sworn testimony, and treated the uncontradicted testimony of credible witnesses as being worthy of no consideration whatsoever. In his brief to the Secretary of Commerce and Labor he says:

"I sincerely trust that it will be found possible to approve my action in this case and order the deportation of Tang Tun to China—the land where I firmly believe he first saw the light of day."

This same inspector, in the same brief or letter to the Secretary, goes out of his way to severely arraign and criticize Inspectors Bowen and Brinker, the latter being still in the employ of the Government, and sets forth:

"These gentlemen, one a former Deputy Collector of Customs, and the other at present a Customs Inspector in the service of the United States Government, were not as careful about the statements to which they attached their signatures under oath as one might expect them to be, especially in view of their experience in the very service against which they are now apparently so willing to lend their efforts. The statements to which each made oath would, if true, impeach the records of this service at Port Townsend."

In this application for certiorari we present a different case from that of Ju Toy.

1. In the Ju Toy case an appeal was prosecuted to the Secretary of Commerce and Labor upon which the facts were reviewed and the case, after

due consideration, affirmed. In the case now before the court an appeal was duly prosecuted and perfected, the record and briefs reaching the Honorable Secretary September 5th, 1906, and the only record made was that the appeal was dismissed, as above set forth, by some one signing the name "Murray," and this Court will take judicial notice of the fact that the Secretary of Commerce and Labor on that date was not named Murray.

2. In the Ju Toy case this court said that "no abuse of authority of any kind is alleged." Emphasis was given to the fact that in the petition for the writ "nothing was alleged except citizenship." This court says: "The broad question is presented, whether or not the decision of the Secretary of Commerce and Labor is conclusive."

We contend that under the statutes the petitioners were entitled: First: To have their appeal heard, duly considered and passed upon by the Secretary of Commerce and Labor—otherwise the provision for appeal is a mockery. The act providing for that appeal does not contemplate the appeal should be passed upon by some mere department clerk, whether his name is "Murray" or what not. It seems to the writer of this brief that the doctrine of the Ju Toy case which leaves the determination of the ultimate

right of a native born citizen of the United States to remain in the United States, or to return to the United States, or to be banished from the United States, to both an Immigration Inspector and the Department of Commerce and Labor was going the full length—but to say this birthright may be denied by a petty Immigration officer at a petty port of entry on the Canadian boundary, is unthinkable.

Secondly: We claim that the record to which we shall call this court's attention shows that the Immigration Inspector was not only utterly unfit to determine the rights of these petitioners by reason of his bias and prejudice, but that he trampled upon all their rights by surreptitiously considering rumors and matters that were not in evidence, and alleged records that were not authenticated, and by mere hearsay in the way of gossip in the form of letters from other persons in connection with the immigration service that would not have been admitted in evidence or considered by any court on earth having under consideration the mere property rights of individuals, instead of the question of their banishment from their native land.

A majority of the Honorable Circuit Court of Appeals for the Ninth Circuit, not only in this but in subsequent cases, seems to have reached the con-

clusion that under the Ju Toy case the Immigration Inspector—no matter how petty an officer he may be, or how unfit to pass upon the rights of an individual, is the court of last resort in cases of this character.

The rule quoted in the dissenting opinion of Justice Brewer in Ju Toy, (25 Sup Ct Rep, 648) expressly provides for a hearing on appeal and there could be no new process of law under any view of this case unless such hearing was had by the proper officer of the Department of Commerce and Labor. Rule seven provides for a secret examination of the applicant and his witnesses and that if "upon the conclusion thereof, the Chinese applicant for admission is adjudged to be inadmissible, he should be advised of his right of appeal and his counsel should be permitted, after duly filing notice of appeal to examine, but not make copies of, *the evidence upon which the excluding decision is based.*"

Rule 8 provides the manner of giving the notice of appeal.

Rule 9 provides that the appeal shall stay the disposal of the Chinese person whose case is thereby affected *until a final decision is rendered by the Secretary.*

The second rule provides that "if the Chinese person has been born in the United States, neither

the Immigration Act, nor the Chinese Exclusion Act prohibiting persons of the Chinese race and especially Chinese laborers from coming into the United States, applies to such persons."

Rule 46 is as follows:

"The provisions of the law regulating immigration, excluding those which prescribe payment of the head tax apply to the residents and natives of Porto Rico and Philippine Islands, and, moreover, the provisions of the laws relating to the exclusion of Chinese apply to all such persons as are of the Chinese race, *except those who are born in the United States.*"

As observed by Justice Brewer, "The Department rules exclude from the jurisdiction of the immigration officers citizens of Chinese descent and limit that jurisdiction to Chinese aliens." By the Act of August 18th, 1894 (28 Stat. at Large 390), it is provided that, "In every case where an alien is excluded from admission into the United States under any law or treaty now existing or hereafter made, the decision of the immigration or customs officer, if adverse to the admission of such alien shall be final unless reversed on appeal to the Secretary of the Treasury."

It will be observed that this act makes the decision of the immigration officers final only when the party is an alien, and that the rule prescribed by the proper department excludes from the operation

of the law, citizens of the United States of Chinese descent. As pointed out by Justice Brewer, to hold that the decision of a petty immigration officer is final contravenes the constitutional rights of the petitioner Tun, a doctrine which this court has never applied even to property rights, let alone the right of personal liberty, which has always been most sacred in the eyes of the law.

The Honorable District Court in reviewing the phase of the question now under discussion, says:

"If there is error in the opinion of this court with respect to the prejudice and unfairness of the inspector, still the contestants have sustained the charge made against the Government, because, under the law, they were entitled to have the case reviewed by the Secretary of Commerce and Labor, and when appealed to, his decision constitutes the final determination of the rights of an alien Chinese person to come into this country. An appeal was taken in this case and the only response to it appearing by the record was the following telegraphic message: 'Appeal Tang Tun and Leung Kum Wui dismissed. Murray.' There being positive testimony uncontradicted, which if carefully analyzed and fairly considered would have justified a reversal of the inspector's decision, I am bound to understand the telegram as being literally true, indicating that the case did not receive any consideration whatever by the Secretary of Commerce and Labor, but some officer of the Department, acting for or in place of the Secretary, refused to entertain the appeal and arbitrarily, without deigning to assign a reason, dismissed it, and I must conclude that a man who by

competent evidence has established a right to enjoy liberty to come and go freely in his own country, and to the protection which the Constitution of the United States guarantees, has been denied such a hearing by the officers of the Government as the laws enacted by Congress provide for, and by reason of such denial this court is obligated to exercise its power for his protection."

The Honorable Circuit Court of Appeals seems to have taken the view that the rights of the petitioners in this case were controlled by the doctrine of this Court in *Chin Yow vs. United States.* In that case the petitioner alleges that he had been prevented by the officers from obtaining testimony on his own behalf and that had he been permitted he could have produced overwhelming testimony that he was native born. This court then says that if one alleging himself to be a citizen is not allowed a chance to establish his right in a mode provided in those statutes, although that mode is intended to be exclusive, the statute cannot be taken to require him to be turned back without more. The decision of the department is final, but that is on the presupposition that the decision was after a hearing in good faith, however summary in form. Our contention is that the hearing contemplated is not the perfunctory investigation of a petty official on the Canadian border one hundred miles from the petitioner's home, but the ulti-

mate hearing on appeal before the Department of Commerce and Labor. While such hearing may be to some extent summary, we do not believe the rule contemplates it shall be other than regular, upon evidence properly authenticated and introduced in such a way as to permit the applicant for admission to test its credibility. The individual whose liberty or expatriation is the issue certainly ought to have the chance to cross-examine witnesses, examine alleged public documents or have them produced and duly proven, and should have an issue of such great importance to him held before a fair, unbiased and impartial tribunal.

In *United States vs. Sing Tuck*, (24 Sup. Ct. Rep. 662), this court held that the Act of August 18, 1894, above referred to applied to a decision on the question of citizenship and that even if it be true that the statute could not make that decision final the consequence drawn by the Circuit Court of Appeals did not follow and was not correct in that case. In that particular case part of the Chinese seeking admission had claimed to be native born, but none of them had offered any other evidence in support of that claim. This court then says:

"As to whether or not the Act could make the decision of an executive officer final upon the fact of citizenship, we leave the question where we found it."

If it be contended that the decision of respondent Edsell is final, then the provision for appeal is a mere superfluity and affords absolutely no protection to the native born Chinese who is sought to be excluded. In the instant case the Government offered no testimony whatever. There is in the record an abundance of absolutely conclusive evidence of the nativity of the petitioner Tang Tun, evidence of such overwhelming character and weight that "were the inquiry one respecting the descent of property, or something other than deportation dependent upon appellant's nativity, the testimony thus uncontradicted would be accepted by any court as the proven, record truth."

If this court shall determine, further that the decision of respondent Edsell was final, then we contend that there is abundant evidence in the record that Edsell was wholly unfit to determine the issue and actually did determine it upon mere hearsay and unverified rumor, and that his brief in the Department of Commerce and Labor shows this to be true and also shows that he was so prejudiced and biased that he would not have admitted the petitioners upon any volume of absolutely unimpeachable testimony. On the other hand, if the court holds that the petitioner was entitled to have his case reviewed by the

Department of Commerce and Labor and shall also hold that the order of dismissal in that Department was tantamount to an order of affirmance, then we contend that the respondent Edsell injected into the record, without the knowledge of petitioners, a large amount of most damaging hearsay gossip and alleged unauthenticated record and that fact tended to and must have prejudiced the Department.

We call this court's attention to a letter written by respondent Edsell to the Honorable Secretary of Commerce and Labor accompanying the record on appeal (Record 109 et seq). In addition to the matter to which we have heretofore called the court's attention, this court will observe that Edsell states that he had "made a careful examination of the Customs records showing the arrival and clearance of vessels in the District of Puget Sound in April and May, 1897. The steamer "Tacoma" was shown to have arrived at Tacoma on April 10, 1897, and to have cleared for the Orient on April 16, four days before Tang Tun is alleged to have been landed, according to the endorsed papers presented by him. Furthermore the said record showed that no other vessel of the same company was in the harbor at the time of the "Tacoma's" departure, nor until five days after said departure." Of this there is no evi-

dence in the record whatever and petitioners had no knowledge that any such statement was to be made to the Honorable Secretary. Following this statement, Edsell without any proof of the truth of the statement, informs the Secretary that the Port Townsend Customs Records, of which there was no certified copy, or other evidence, refuted the statement of Bowen and Brinker, two of petitioners' witnesses in certain particulars. This is also mere unverified statement of the local inspector. He also in the same connection informs the Honorable Secretary of certain conversations he is alleged to have had with members of the firm of Quong Tuck & Company of Seattle, Washington. He then proceeds to inform the Secretary that the Chinese *passenger* manifests of the Port Townsend office show certain things. There was no certified copy of these alleged manifests offered in evidence at all. He also injected into the record an alleged typewritten list of the Chinese who arrived on the steamer "Tacoma," found at pages 118 and 119 of the record. There was no certified copy of these documents, if any such documents existed. He also, on page 112, injected into the record without the knowledge of petitioners, certain alleged data with reference to one Ah Toy and one Gin Goon, charging and alleging that these alleged par-

ties were found with papers bearing the identical endorsements found on those of petitioners. He follows this with a statement that a large number of Chinese with like certificates had been arrested on the premises of Wa Chong Company of Seattle; that they had been ordered deported by a United States Commissioner. Of these statements, there was no proof whatever, nor did petitioners have any opportunity to controvert them. He also injected into the record certain letters passing between himself and other persons connected with the Immigration Service, a list of which is set out at page six of the Petition for Writ of Certiorari. We invite the court's attention to these letters. This court cannot read them without being at once satisfied that Edsell was a biased, prejudiced and improper person to pass upon the rights of these petitioners, and to say that a court having such manifest bias should by mere ipse dixit banish from his native land a citizen thereof is so shocking as to be unthinkable.

On July 6 (Record 65) after Edsell had examined the petitioners and had examined two white witnesses and had entered the order of rejection and when advised that Tang Tun had telegraphed to Seattle for counsel to prosecute an appeal, Edsell writes to W. B. Estell, Inspecteor in Charge at Seattle, in-

forming him that "Tang Tun immediately telegraphed Chin Quong requesting him to employ attorneys, and in anticipation of an appeal which will probably follow, I respectfully request that you furnish me, if possible, with a copy of the affidavit filed in your office against Attorney J. C. Whitlock by some white witnesses whom he had employed for use in a Chinese case."

Mr. Whitlock had been for many years an honorable practitioner at the bar of the courts of the State of Washington. Why Edsell should have anticipated that Whitlock might be employed and before he had appealed at all, took steps to make a personal attack on him we do not know.

We call the court's attention to a letter from Edsell to Estell (Record 67-68) and particularly to the second paragraph in which he manifests great concern lest the petitioners establish by Bowen, a former deputy collector, the genuineness of the certificate held by Tun bearing the signature of J. C. Saunders. We also call the court's attention to a letter from one S. H. Hamer to Estell (Record 69) containing the most serious charges against Attorney Whitlock. Neither Mr. Whitlock nor petitioners had any knowledge that this letter was injected and forwarded to the Honorable Secretary, nor had they

any opportunity to disprove the absurd and damaging statements contained in it.

We also call the court's attention to the letter at page 76-78 of the Record, written by respondent Edsell to Estell, July 25, 1906. It is apparent from this letter that Edsell was determined to exclude the petitioners regardless of what the proof might be, and that it was not his purpose to undertake to determine how the discrepancy between the certificate given by Saunders to the petitioner, and the record made by Saunders at Port Townsend occurred. Edsell concludes that letter as follows:

"I know you will appreciate the necessity of great care in this investigation in order that no opportunity for developing its fraudulent character may be lost."

We call the court's attention to a letter from Fisher to Estell (Record 99-100) and a letter from Estell to Fulton of August 13, 1906 (Record 101). These letters were thrown into the record by Estell on appeal and without the knowledge of these petitioners and they contain absolutely unverified and damaging statements, and petitioners were afforded no opportunity whatever to meet them.

How can it be held that the petitioners have been afforded a fair hearing or given an opportunity to establish their citizenship in the light of all this riff-

raff that was not only considered by the Inspector, but injected into the record on appeal without the knowledge of petitioners.

This Court in the case of *Chin Yow vs. United States* says:

"That between the substantive right of citizens to enter and of persons alleging themselves to be citizens to have a chance to prove their allegations on the one side, and the conclusiveness of the Commissioner's fiat on the other, when one or the other must give way, the latter must yield. In such a case something must be done and it naturally falls to be done by the court."

In our petition we have charged the representatives of the Government with unfair treatment in the investigation made in this case and with having rendered an adverse decision contrary to the facts and the law applicable, and the record abundantly proves it. The Honorable District Court found that these allegations were fully sustained and completely established by the evidence. That court said:

"The first of the reasons assigned by the Inspector for denying admission to appellees has reference to the determination of the question of Tang Tun's nativity by the Collector of Customs in 1897, which the Inspector assumed to have been adverse. In this the prejudice of the Inspector and the unfairness of his decision are clearly indicated, because the conclusion reached is contrary to the undisputable fact that Tang Tun was not excluded but admitted to this country, where he lived, not in concealment but

openly for eight years, his presence being known to many people including one of the Chinese Inspectors, Mr. T. M. Fisher, Jr., who so certified in a report which he made on this case, which report is in the record. The record which the Collector of Customs made by endorsement on papers filed in the Customs House furnished the only supposable basis for the Inspector's conclusion. That record is not, however, by any statute deemed to be legal evidence and it would not be considered in any court of the United States to prove any fact. It is authenticated only by the handwriting and signature of the man who was at the time Collector of Customs, and it was contradicted by a certificate in the handwriting of and signed by the same Collector upon the original document which he delivered to Tang Tun as evidence of his right to be in this country."

The Honorable District Court referring to the character of the testimony as to the citizenship of appellees found:

"The second of the assigned grounds contains a glaring manifestation of prejudice on the part of the Inspector. In this he certified that although he considered the decision of the Collector of Customs as being adverse to the right of Tang Tun to enter the United States and a final adjudication of the whole matter, he nevertheless afforded a fair opportunity to prove that decision had been unjust, and that 'the applicant failed to furnish evidence to support such a conclusion.' In a sentence he eliminated not only the testimony of Fitzhenry, Burritt and Coombs who are regarded by the officers of the Immigration Bureau as professional witnesses in Chinese cases, but the testimony also of a man who for many years has been trusted as a member of the police force of Seattle, whose testimony has not been contradicted

and has been corroborated by Mr. Fisher as to the important fact that Tang Tun was employed by the Wah Chong Company in Seattle for a considerable time after the date of the supposed adverse decision of the Collector of Customs."

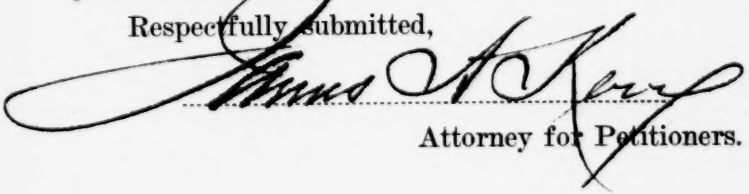
The Chinese Inspector, as disclosed by this record, refused to accept or give credence to the testimony of reputable officers of the City of Seattle. In fact they refused to consider the testimony of both white and Chinese witnesses. Must a Chinese citizen be punished by banishment from his native land by the arbitrary acts of Chinese Inspectors, who decline to consider the testimony of unimpeached witnesses of excellent standing for truth and veracity in the community in which they live? If such be the law, then it is not safe for any native born Chinese to ever leave the locality in which he is born. If the members of the family of a native born Chinaman and the white people who are familiar with his birth and history are to be barred from giving testimony, the result is appalling and a native born citizen of the United States has no rights that a prejudiced and hostile Chinese Inspector is bound to respect. If the question of the citizenship of a member of this Court is ever called in question and the testimony of members of his family and the old friends of that family is to be disregarded, then it might be questionable

whether the citizenship of such member of this court could be established to the satisfaction of a Chinese Inspector who seems to be laboring under the impression that no Chinaman, whether native born or otherwise shall be admitted into the United States. They seem to proceed upon the theory that they must make a record for themselves and that the value of that record must rest upon the number of Chinese who are excluded.

In conclusion we contend that the rule announced by the majority of this Honorable Court in the Ju Toy case ought to be reversed. Assuming for the sake of argument that the petitioner Tang Tun was born in the United States, he had just as good a right as any other citizen to travel abroad and ought not to lose any of his rights by going abroad, particularly in the light of the fact that before departing to China he had presented his proof to Edsell showing his nativity and in effect applying for leave to return to China for the purpose of being married, with the expressed intention of returning with his wife to his native land. We fail to see what possible difference, so far as the result is concerned, whether a citizen residing in the country be banished from his native land, or whether having departed to a foreign jurisdiction, after notice to the Immigration Office,

when he returns he be met at the threshold and denied admission. He is banished just as effectually in the one case as in the other, and that banishment is punishment of the severest sort is not open to discussion. Had Tang Tun been arrested in the United States and attempted to have been deported, as we read the decisions of this Court, he could have had his rights as a citizen determined by the courts of the land. The Government, through Edsell, consented that he change that status by returning to China for the purpose of being married, without informing him that if he left the country he would so far forfeit his rights as a resident thereof as to leave the question of his birthright to the sole jurisdiction of a petty Immigration officer. We earnestly urge the court to sustain the writ of error and order the petitioners discharged.

Respectfully submitted,



Attorney for Petitioners.

In the Supreme Court of the United States.

OCTOBER TERM, 1911.

TANG TUN AND LEUNG KUM WUI, petitioners,

v.

HARRY EDSELL, CHINESE INSPECTOR in charge at the port of Sumas, Wash., for the United States Government.

No. 45.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CISCUIT.

BRIEF FOR THE UNITED STATES.

STATEMENT OF CASE.

In June, 1906, Tang Tun and his wife, Leung Kum Wui, applied at the port of Sumas, State of Washington, for permission to land in the United States, Tang Tun claiming to be a native-born citizen. They were both denied admission by the Chinese inspector in charge at that port, Harry Edsell, after a hearing. (R., 5–6, 63.) They thereupon appealed to the Secretary of Commerce and Labor, who affirmed the decision of the inspector in

charge, such affirmance being indicated by a telegram reading "Appeal Tang Tun and Leung Kum Wui dismissed," signed "Murray." (R., 19.)

Application was then made on their behalf to the District Court of the United States for the Western District of Washington for a writ of habeas corpus. (R., 2.) The petition alleged, in substance, that Tang Tun was a native-born citizen of the United States, and that the immigration authorities had denied him a fair hearing upon his application for admission and had been guilty of an abuse of official discretion. The writ having been issued (R., 7) a motion to quash the same was filed and overruled (R., 10, 12). Thereupon the respondent, Edsell, answered, denying the allegation of the petition as to Tang Tun's citizenship and the alleged abuse of authority by the immigration officials. (R., 12.)

The case was heard and determined by the District Court upon a stipulation, by which the record before the Department of Commerce and Labor of the proceedings in the case of Tang Tun and his wife was submitted for the consideration of the court in determining whether there had been an abuse of discretion by the immigration officers. (R., 16.)

The District Court found that there was an abuse of official discretion in the proceedings before the immigration authorities, and then held that Tang Tun, in the proceedings referred to, had established his claim to citizenship. It therefore directed that

he and his wife be discharged from the custody of the respondent, Edsell. (R., 20, 22, 28.)

Edsell, the inspector, appealed to the Circuit Court of Appeals, which reversed the judgment of the District Court and remanded the case with directions to dismiss the habeas corpus proceedings, finding the proceedings before the immigration authorities to have been in accordance with law. (R., 131–142.) Circuit Judge Morrow dissented on the ground of want of jurisdiction of the appeal, the question in the case, in his opinion, being a constitutional one. (R., 142.)

The case is now before this court upon writ of certiorari, granted at the October term, 1909.

QUESTIONS PRESENTED.

The record presents two questions: (1) Whether an appeal lay to the Circuit Court of Appeals, and (2) whether the proceedings before the immigration authorities show an abuse of authority on their part and a denial of a fair hearing to petitioners.

ARGUMENT.

I.

THE APPEAL WAS PROPERLY TAKEN TO THE CIRCUIT COURT OF APPEALS.

There is no constitutional question in this case. It is true the petition concluded with the averment that petitioners were deprived of their liberty without due process of law, in violation of the Constitu-

tion of the United States. (R., 2–4.) But the questions actually presented by the pleadings and decided by the District Court were whether there was an abuse of discretion by the immigration authorities, and, if so, whether Tang Tun was a native-born citizen of the United States. Neither of these questions involved the construction or application of the Constitution of the United States, and the assignments of error made by the Government to the judgment of the District Court (R., 32) present no such question.

That an abuse of discretion by the immigration officers would amount to a denial of due process of law, was settled by this court in *Chin Yow* v. *United States,* 208 U. S., 8. The Government made no assertion to the contrary in this case, but merely contended that the record of the proceedings before the immigration authorities did not show any abuse of official discretion, and therefore the District Court had no jurisdiction of the case. (See Answer, R., 12–15.)

The question as to abuse of official discretion was a question of fact, going to the jurisdiction of the District Court. (*United States* v. *Ju Toy,* 198 U. S., 253.) Having decided that there was such an abuse, and thus sustained its jurisdiction, that court proceeded to determine the question of citizenship. It is well settled that, under such circumstances, a case may go either to the Circuit Court of Appeals or this court. (*McLish* v. *Roff,* 141 U. S., 661; *United States* v. *Jahn,* 155 U. S., 114.)

Even if a constitutional question were involved, the case was properly taken to the Circuit Court of Appeals, because another question was presented and decided—the citizenship of Tang Tun (see opinion of the Circuit Court of Appeals for the Ninth Circuit in the case of *Can Pon,* 168 Fed., 479, decided with this case, and the decisions of this court there cited).

II.

THERE WAS NO ABUSE OF DISCRETION ON THE PART OF THE IMMIGRATION AUTHORITIES—A JUDICIAL HEARING NOT REQUIRED.

The contention that there was an abuse of discretion and a denial of a fair hearing by the immigration authorities proceeds upon an erroneous conception of the law governing such proceedings.

As pointed out by the Circuit Court of Appeals (R., 134), the rights of a party claiming admission to the United States have been determined by this court in *United States* v. *Ju Toy* (198 U. S., 253) and *Chin Yow* v. *United States* (208 U. S., 8).

In the *Ju Toy case* it was held, in substance, that the decision of the immigration officers as to the citizenship of a person of Chinese descent claiming to be a native-born citizen is final and conclusive upon the courts, although adverse, in the absence of any showing that such officers have abused their official discretion.

In the *Chin Yow case* it was held that a Chinese person denied admission into the United States by the immigration authorities was entitled to a writ

of habeas corpus upon a petition alleging that he was arbitrarily denied such a hearing and such an opportunity to prove his right to enter the country as the statute meant he should have. But the court in that case was careful to add (208 U. S., 11):

> Of course if the writ is granted the first issue to be tried is the truth of the allegations last mentioned. If the petitioner was not denied a fair opportunity to produce the evidence that he desired, or a fair though summary hearing, the case can proceed no farther. Those facts are the foundation of the jurisdiction of the District Court, if it has any jurisdiction at all. It must not be supposed that the mere allegation of the facts opens the merits of the case, whether those facts are proved or not. *And, by way of caution we may add that jurisdiction would not be established simply by proving that the commissioner and the Department of Commerce and Labor did not accept certain sworn statements as true even though no contrary or impeaching testimony was adduced.*

It will be observed that the opportunity to be heard accorded by the statute as interpreted by this court, is an opportunity to the petitioner fairly to present his case. The petitioner, however, contends for much broader privileges, and, in fact, practically for a judicial hearing. Thus, on page 18 of his brief, his attorney says:

> * * * While such hearing may be to some extent summary, we do not believe the

> rule contemplates it shall be other than regular, *upon evidence properly authenticated and introduced in such a way as to permit the applicant for admission to test its credibility.* The individual whose liberty or expatriation is the issue certainly ought to have the chance *to cross-examine witnesses, examine alleged public documents, or have them produced and duly proven,* and should have an issue of such great importance to him held before a fair, unbiased, and impartial tribunal.

The District Court also indicates in its opinion that it was laboring under an erroneous impression as to the nature of the hearing required by the statute when it says, in substance, that the immigration authorities could not consider the record in the office of the collector of customs showing Tang Tun's rejection in 1897, because that record was "not by any statute declared to be legal evidence, and it would not be competent in any court of the United States to prove any fact." (R., 23.)

We do not so read the decisions of this court upon the subject. If the applicant is given a fair opportunity to present his claims to admission, and they are fairly considered, we do not understand that he has any right to object to the immigration authorities making all reasonable inquiries for the purpose of testing the truth of his assertions, and especially from consulting their official records in regard thereto, which is all that was done in this case.

It is absurd to say that a judicial hearing is not required, and yet to require all the formalities of a judicial hearing to be observed by administrative officers, who are not presumed to be familiar with the rules of evidence. If the matter may be submitted to the determination of administrative officers, it must and may be determined according to administrative methods, provided the persons whose rights are so adjudicated are given a fair opportunity to present their case and no abuse of authority is shown. (*Monongahela Bridge* v. *United States,* 216 U. S., 177, 194; *The Japanese Immigrant Case,* 189 U. S., 86, 100; Cooley on Taxation, 3d Ed., p. 59; *King* v. *Mullins,* 171 U. S., 429.)

Considering the proceedings before the immigration authorities in the light of the rules as to the hearing required by the statute announced by this court, it is clear that the allegations of abuse of authority or denial of a fair hearing are entirely unfounded. A fair statement of the proceedings referred to is contained in the majority opinion of the Circuit Court of Appeals. (R., 134–142.) It shows that Tang Tun was afforded full opportunity to prove his claim of citizenship by birth, that he was advised of the fact that the official records of the customhouse at Port Townsend showed that he had been refused admission in May, 1897, and given an opportunity to explain that discrepancy as well as to furnish further proof of his nativity.

Inspector Edsell has been accused of abuse of authority, but all that the record shows is that he

exercised the utmost care in ascertaining the truth of Tang Tun's pretensions to citizenship, in the course of which, as will presently be pointed out, he disclosed an apparent fraud on the part of Tang Tun and his attorney.

If the correctness of the decision of the immigration authorities were an issue (which it is understood is not the case), the record certainly justifies their conclusion. Upon the original hearing before the inspector June 23, 1906, Tang Tun was examined at length, and two witnesses testified in his behalf. (R., 43–61.) The testimony of one of those witnesses (Coombs) was to the effect that Quong Lee, the alleged father of Tang Tun, had been a resident of Seattle since 1879; that he had two children, a boy and a girl; that Quong Lee took the children back to China in 1884 or 1885, when the boy was 4 or 5 years of age, and that when Tang Tun appeared in Seattle in 1897, 13 years later, at the store of Wa Chong, he had been told by the parties who conducted the store that he was Quong Lee's son. This witness was shown to be a professional witness of very poor memory. (R., 55–59.) The other witness (Thompson), upon whose testimony Judge Hanford, holding the District Court, chose to base his opinion that Tang Tun had been born in the United States (R., 22), appears to have had no greater information about the birth of Tang Tun or better means of identifying him than Coombs, yet he testified positively that Tang Tun

was the son of the Chinaman who left Seattle, as he says, in 1878 or 1879, when the boy was about 6 year old (R., 59–61).

After this examination Inspector Edsell appears to have examined the customs records at Port Townsend and discovered that they showed that Tang Tun had been refused admission in May, 1897 (the Chinese-exclusion laws then being administered by the Treasury Department through their collectors of customs). He thereupon gave Tang Tun a further examination, in which he was questioned as to the discrepancy between the indorsement of Collector Saunders on the identification papers that he had submitted and the original records in the customs office. (R., 62.) Tang Tun was unable to explain the discrepancy and was also unable to furnish any other witnesses as to his nativity. (Ib.) Being asked about the sister whom he had said he had had, he first testified that she was younger and then that she was older; that he did not know how long she had lived; that some one had told him, but that he had forgotten whom. (Ib.)

Then Tang Tun's attorney endeavored to perpetrate a palpable fraud upon the immigration officers by attempting to bolster up his case by the employment of two professional witnesses, Burritt and Fitzhenry. The affidavits of these parties appear at pages 73 and 74 of the record; their examination by Inspector Edsell at pages 79

and 84 of the record. In regard to the testimony of these witnesses the district judge said:

> The case appears to me to have been overworked; that is to say, the attorneys have weakened the case for their clients by unnecessarily calling as witnesses Mr. Fitzhenry and Mr. Burritt, *whose testimony as to the most important facts is unbelievable.* (R., 21.)

The vital fact in this case was the nativity of Tang Tun. Whether or not he had been admitted in 1897 was after all inconclusive, and so Inspector Edsell gave him full opportunity to prove his nativity. Upon the meager testimony of Thompson alone, who, even according to the District Court, was the only credible witness offered, Inspector Edsell refused to accept Tang Tun's claims to citizenship. In the *Chin Yow case* this court said that such action was not sufficient to give the courts jurisdiction. This would seem sufficient to dispose of this case.

TANG TUN'S NATIVE-BORN PAPER—HOW HE OBTAINED IT—ITS SIGNIFICANCE.

The fact that Tang Tun had a so-called native-born paper, with an indorsement in the handwriting of former Collector Saunders to the effect that he had been admitted into the United States in April, 1897, upon his arrival at Tacoma, Wash., on the steamer *Tacoma* from China, was not ignored by the inspector, who examined the customs records at Tacoma for the purpose of verifying

that indorsement. Those records contained the original of the indorsed paper presented by Tang Tun, such original bearing an indorsement signed by Collector Saunders that Tang Tun had been rejected May 25, 1897. (R., 63.) Walter Bowen, special deputy collector of customs under Saunders, testified to the genuineness of Collector Saunders's signature upon both the papers referred to. (R., 91–92.)

The manner in which Tang Tun obtained the identification paper containing the indorsement of Collector Saunders to the effect that he had been admitted April 20, 1897, is interesting. After first testifying that upon his arrival at Port Townsend in 1897 the collector gave him the paper (R., 47), he testified that he brought the paper to the collector, who signed it and gave it back to him (ib.); and further that the paper was his native-born paper; that when he was in China his mother wrote back to Chin Quong to fix him up a paper and send it to him, and that Chin Quong wrote to him for photographs, which he sent to him. This is what Chin Quong said on this point (R., 98–99):

> Q. Did you procure for him or help him procure this paper [showing paper presented by applicant on which he claims he was admitted by J. C. Saunders, collector of customs, in the year 1897]?—A. No; I didn't. I was in China that year—1897.
>
> Q. Did you procure for him or help him procure this paper after you returned from

China?—A. I had nothing to do with his getting that paper.

Q. Then when he says that you got this paper for him he is telling what is not true, is he?—A. He is mistaken if he says that.

It is to be observed that the so-called native-born paper was not a paper required by statute. It was not prepared by any official, but by or on behalf of the Chinaman concerned. By a practice of long standing Chinese who leave the United States by a port by which they might subsequently seek reentry are permitted, as an accommodation to them and the steamship companies, to present affidavits in duplicate, one copy of which is marked by the immigration officer so as to indicate that the Chinaman referred to had departed from that port on a certain date. This copy is returned to the Chinaman, so that he may produce it to the steamship agent abroad when seeking to return and to the immigration officers on his return to such port as indicating that he had previously lived here and may have some color or claim to readmission. Such indorsement is in no sense a determination of his right to reenter. The other copy is kept by the immigration officer at the port of departure, and by virtue of its custody and use acquires an official character. In Tang Tun's case the copy retained bore the indorsement of Collector Saunders, stating that he had been refused admission to the United States upon his return to the United States in 1907.

In transmitting this case to the Secretary of Commerce and Labor, Inspector Edsell said (R., 111–112):

> I would also request your attention to exhibit three (3). This is a typewritten list of the Chinese who arrived on the steamer *Tacoma* April 10, 1897, the said list having been prepared according to the custom prevailing in the office of Collector Saunders, by which such a list of each vessel's arrivals was used for the purpose of making memoranda as to the examination and disposition of each case as it was considered by the collector of each ship. This document was found in the Port Townsend records. On the last page thereof you will note the name of "Tang Tun—son Quong Lee, born, Seattle, rejected." On page 96 appellant's witness, Mr. Bowen, volunteers information concerning the customs by which this list was prepared; on page 97 identifies this list and states that the word "rejected" opposite the appellant's name is Mr. Saunders' writing.

For Mr. Bowen's identification of this list and certificate as being in Collector Saunders's handwriting see record, pages 93–94.

In his order rejecting Tang Tun, after referring to what was shown by the Port Townsend records as to the rejection of Tang Tun in May, 1897, Inspector Edsell said (R., 63):

> It is a matter of record that another Chinaman and alleged native-born citizen of the United States who was rejected at the

same time by the Port Townsend office, having arrived on the same ship with the applicant herein, was subsequently found in the store of the Wa Chong Co., was arrested, and after due hearing of his case before the courts was ordered deported to China, and was so deported. Further, it is a matter of record that a number of other Chinese were arrested at the same time as the deported Chinaman above mentioned, all having been found in the Wa Chong store, and all having been in possession of " native-born citizen " papers bearing the alleged indorsement of Collector J. C. Saunders. Each was given due hearing before the proper courts, and each was deported to China by order of the court on a finding that the records of the Port Townsend office did not show the landing claimed.

It is not remarkable that, under these circumstances, the inspector should have refused to accept the indorsement upon Tang Tun's identification papers by former Collector Saunders to the effect that Tang Tun had been admitted in April, 1897, when at best that indorsement could be but a copy of the official records at the Port Townsend office, which showed that he had been rejected, especially in view of the experience of the department, as shown by the records, in regard to the native-born citizenship papers bearing the indorsement of Collector Saunders; nor that he should have advised the department that that view was confirmed by the passenger lists on file in the collector's office.

THE IMMIGRATION AUTHORITIES HAD A RIGHT TO REFER TO THEIR OWN RECORDS.

The propriety of the inspector officers referring to the immigration records in the customs office, in order to verify the claims of the applicant for admission, seems to be unquestionable. Those records are public records, belonging at this time to the Department of Commerce and Labor, which is now charged with the administration of the Chinese exclusion and immigration laws. The very purpose of these records is that they may be used as in this case. If a court may take judicial notice of its own records, surely the immigration authorities may of theirs. The applicant had notice of the fact that the immigration authorities were relying on these records, and had ample opportunity to impeach them if he so desired.

With regard to the exhibits which accompanied the record transmitted to the Secretary with a letter of the inspector in charge, giving the result of certain investigations conducted by him (R., 109 et seq.), it should be borne in mind that Edsell was a sworn officer of the Government, and his statements therefore entitled to credit as unbiased assertions of what he believed to be the truth; that the departmental regulations required that he comment upon the case when submitting it (rule 13 of the Chinese regulations promulgated by the Secretary of Commerce and Labor, February 5, 1906); that the exhibits were official records (and his statements related to other records of the same

nature), with the manner of creating and preserving which, it must be assumed, the Department of Commerce and Labor was familiar, as it was also with the fact that numerous Chinese holding so-called Saunders papers had been arrested and deported; and that those exhibits related only to the question whether Tang Tun had been admitted or rejected in 1897 (not the vital question at issue, which was his claim of citizenship), and were cumulative merely, the fact that he then had been rejected having been positively proved by the records of the collector's office.

THE INSPECTOR DID NOT VIOLATE THE RULES OF THE DEPARTMENT.

In regard to the charge that Inspector Edsell had violated rule 7 of the department, that a Chinese applicant for admission "should be *permitted,* after duly filing notice of appeal, to examine, but not make copies of, the evidence upon which the excluding decision is based" (brief for petitioners, p. 14), the record shows that counsel for appellant was entirely familiar with the record and the grounds of exclusion (see, among other things, brief of Attorneys Whitlock and Godfrey on the appeal to the Secretary, R., 103–108), and that on August 15, 1906, in response to a request from Attorney Godfrey, Inspector Edsell telegraphed authority for Tang Tun's attorneys to copy all the testimony in his case (R., 19, 20). They were also advised of the official records referred to by Inspector Edsell

in his excluding decision (R., 5, 63), and there is no claim that they could not have had and examined them if they had so desired.

THE APPEAL TO THE SECRETARY OF COMMERCE AND LABOR WAS PROPERLY HEARD AND DETERMINED.

District Judge Hanford assumed to interpret the telegram from the Department of Commerce and Labor to the immigration inspector in charge at Seattle, "Appeal Tang Tun and Leung Kum Wui dismissed, Murray," " as being literally true, indicating that the case did not receive any consideration whatever by the Secretary of Commerce and Labor, but some officer of the department acting for or in place of the Secretary, refused to entertain the appeal and arbitrarily, without deigning to assign a reason, dismissed it." (R., 24.)

It is not to be assumed, however, that because the Assistant Secretary, Murray, signed the telegram, he decided the case. He may have been simply communicating the action of the Secretary. It is immaterial, however, whether the Secretary or the Assistant Secretary acted in this matter, as the Assistant Secretary was fully authorized by law to act therein.

The Assistant Secretary by the terms of the act creating his office (32 Stat., 825, sec. 2) " shall perform such duties as shall be prescribed by the Secretary or required by law." The handling of the Chinese appeals was, under the practice of the department, a part of his duties from about the time of his induction into the office (see below,

where published decisions signed by him are cited). The act of the Assistant Secretary is to be regarded in law as that of the Secretary. (*Parish* v. *United States*, 100 U. S., 500, 504; *Hannibal Bridge Co.* v. *United States*, 221 U. S., 194.)

This court will judicially notice that Lawrence O. Murray was Assistant Secretary of Commerce and Labor in 1906. If any evidence of that fact is needed, it may be found in the Official Register of the United States of July 1, 1905, p. 1073, or in the record of his confirmation by the Senate as such January 7, 1904 (38 Cong. Rec., 543).

The words "appeal * * * dismissed" were used in the telegram in the sense of "decision * * * affirmed," and were so understood by petitioners and their counsel. (See petition for writ of habeas corpus, R., 2, 3.) The expression had always been used in the Treasury Department, and when the enforcement of the immigration and exclusion laws was transferred to the Department of Commerce and Labor was continued there. See published Decisions of the Treasury Department, Nos. 22884, 22901, 22911, of March 14, 20, and 22, 1901 (4 Treas. Dec., 276, 294, and 315), and No. 23539 of February 25, 1902 (5 id., 147), all decided by Assistant Secretary of the Treasury Taylor, and published Decisions of the Department of Commerce and Labor, Nos. 16, 19, 24, 56, and 92, dated April 9, 26, May 13, and September 8, 1904, and March 30, 1905, all decided by Assistant Secretary of Commerce and Labor Murray. See also *Tur-*

ner v. *Williams* (194 U. S., 279, 282), where the words were used in the same sense.

The Assistant Secretary's reason for announcing the ruling of the department upon Tang Tun's appeal by the brief and expeditious method of a telegram is obvious. The aliens had been held in detention for over two months, while the immigration officials were exerting every possible effort to ascertain the truth regarding their claims. A vessel by which deportation might be effected was to sail September 7 (R., 113), and unless availed of it would have been necessary to hold the aliens for another long period.

Another contention is that the appeal could not have had the personal attention of the Secretary (or Assistant Secretary) because the record was not received in the department until September 5 and the telegram announcing the decision was sent September 6. Reference to the record (pp 19, 113), however, will show that the case was before the department for nearly two days—from 9.50 a. m. one day to 3.35 p. m. the next—so there was ample time for that careful consideration which it must be assumed was given the case by the Secretary or the Assistant Secretary.

It is respectfully submitted that the judgment of the Circuit Court of Appeals should be affirmed.

WILLIAM R. HARR,
Assistant Attorney General.

OCTOBER, 1911.

○

TANG TUN *v.* EDSELL, CHINESE INSPECTOR.

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

No. 45. Argued November 7, 1911.—Decided March 11, 1912.

Under the acts of August 18, 1894, c. 301, 28 Stat. 372, 390, and of February 14, 1903, c. 552, 32 Stat. 825, the decision of the question of citizenship of a Chinese person seeking to enter the United States is final unless reversed on appeal by the Secretary of Commerce and Labor; and unless it affirmatively appears that the executive officers acted unlawfully or improperly, or abused their discretion, their finding is conclusive and not subject to review by the courts.

In this case it appears that the requirements of the law were satisfied and there is no ground for judicial intervention.

The decision of an appeal is none the less that of the Secretary of Commerce and Labor because communicated by the Assistant Secretary, *Hannibal Bridge Co.* v. *United States*, 221 U. S. 194, by telegram, and later verified by letter.

The fact that a case is quickly decided, in this case two days after its submission, is not a basis for attack on ground of abuse of discretion or denial of due process.

Where the District Court takes jurisdiction and proceeds to determine the merits in a *habeas corpus* proceeding, the respondent can carry the case to the Circuit Court of Appeals.

168 Fed. Rep. 488; 93 C. C. A. 644, affirmed.

THE facts, which involve the right of a Chinese person to enter the United States, and whether the inquiry to determine whether such person should enter was properly conducted, are stated in the opinion.

Mr. James A. Kerr, for petitioners, submitted.

Mr. Assistant Attorney General Harr for the United States.

MR. JUSTICE HUGHES delivered the opinion of the court.

On June 22, 1906, Tang Tun and Leung Kum Wui, his wife, Chinese persons, sought entry to the United States at the port of Sumas, State of Washington, and were denied admission by the inspector in charge, whose order was affirmed by the Secretary of Commerce and Labor. Application was then made to the District Court of the United States for a writ of *habeas corpus*.

It was alleged in the petition that Tang Tun was a citizen of the United States, born in 1879, at Seattle, of parents there domiciled; that, in 1884, he went to China, where he remained thirteen years; that, in 1897, he returned to the United States, was admitted by the collector of customs after examination, entered the employ of Wa Chong & Co., in Seattle, and continued with that firm until 1905, when he returned to China for the purpose of marrying; that he was married to Leung Kum Wui in accordance with the laws of China and the consular requirements of the United States; that the officers concerned had improperly conducted the inquiry and had abused their discretion in refusing admission; and that the petitioners were restrained of their liberty without due process of law.

The writ was granted, and the case having been submitted to the District Court upon the record of the proceedings on the application for entry and the appeal to the Secretary of Commerce and Labor, it was held that the petitioners had been denied the hearing for which the act of Congress provided, that Tang Tun had established his citizenship, and that he and his wife were entitled to remain in this country. Accordingly, both were discharged from custody. 161 Fed. Rep. 618. This decision was reversed by the Circuit Court of Appeals, which reached the conclusion that the requirements of the law had been satisfied and that there was no ground for

judicial intervention. 93 C. C. A. 644; 168 Fed. Rep. 488. This court issued a writ of certiorari.

The acts of August 18, 1894, c. 301 (28 Stat. 372, 390), and of February 14, 1903, c. 552 (32 Stat. 825, 828), make the decision of the appropriate immigration officer final unless reversed on appeal to the Secretary of Commerce and Labor. And if it does not affirmatively appear that the executive officers have acted in some unlawful or improper way and abused their discretion, their finding upon the question of citizenship must be deemed to be conclusive and is not subject to review by the court. *United States* v. *Ju Toy*, 198 U. S. 253; *Chin Yow* v. *United States*, 208 U. S. 8.

It appears from the record that on his arrival, Tang Tun was promptly examined by the inspector at Sumas. The examination was careful and fair. He testified on June 23, 1906, again on June 27, 1906, and still further on July 5, 1906. He had presented, in support of his application, affidavits which he had taken with him for the purpose of identification when he left the United States in 1905. These affidavits described his parentage, his place of birth and his residence in this country substantially as set forth in his petition; and they bore the endorsement of the inspector under date of October 1, 1905. The two white witnesses who had joined in one of the affidavits were examined at Seattle on July 2, 1906, and in the report of the inspector at that place, it is stated that the Chinese witness who made the remaining affidavit of identification had been notified to appear and had informed the inspector that he did not care to testify.

As already noted, the applicant asserted that he had been admitted to the United States in 1897, after examination, by the collector of customs, and a copy of the identification papers he then had was produced, bearing what purported to be the endorsement of the collector as to the fact of admission. The inspector found, however,

that in the records of the customs office at Port Townsend, Washington, the port at which he had arrived in 1897, it was stated that he had been rejected. On his reëxamination, Tang Tun was questioned as to the discrepancy. He was also told that the witnesses who had made the identification affidavits in 1905 had been examined and that their testimony was not satisfactory; and he was asked whether he could furnish any additional testimony as to his nativity. Apparently he had nothing further to submit and the inspector made an order on July 5, 1906, rejecting his application.

On the same day Tang Tun was informed of the inspector's decision and of his right to appeal to the Secretary of Commerce and Labor. An appeal was taken and on July 7, 1906, the applicant's attorney notified the inspector that he intended to take additional testimony. An extension of time was granted for this purpose. Several affidavits were presented on behalf of the applicants, and these were forwarded to the office at Seattle where the witnesses as to disputed points were examined by the inspector. On August 28, 1906, the record of the proceedings, with the exhibits to which we shall presently refer, was forwarded to the Secretary of Commerce and Labor and a brief discussing the evidence and the course of the proceedings was also submitted on behalf of the applicants under date of August 25, 1906. The record was received by the Secretary of Commerce and Labor on the morning of September 5, 1906, and on the afternoon of the following day a telegram was sent from the Department to the inspector at Sumas as follows: "Appeal Tang Tun and Leung Gum Y[illegible] dismissed. Murray;" and this was confirmed by a letter from the Department. Then followed the *habeas corpus* proceedings.

It is clear that the applicants had full opportunity to present their evidence and to produce witnesses on their behalf. But it is charged that the inspector who con-

ducted the inquiry was biased, and that his unfairness is shown by the manner in which he dealt with the question whether Tang Tun had been admitted by the collector in 1897. We do not find this charge to be justified. When it was ascertained that Tang Tun had papers bearing, apparently, the endorsement of the collector, and showing that he had been admitted on his former arrival, it was certainly permissible for the inspector, if indeed it was not his duty, to examine the official records of the customs office to ascertain whatever they might disclose as to the disposition of the case. On finding that these records contained the statement, over what appeared to be the signature of the same collector, that Tang Tun had been rejected, the inspector properly brought this fact to the latter's attention, and asked whether he had any explanation to give. No right of the applicants was violated by the inspector, either in his own action preliminary to the order of rejection or in his subsequent communication with the Seattle officers to the end that the matter should be sifted and the witnesses who had made affidavits in support of the appeal should be carefully examined.

It is urged, however, that, without the knowledge of the petitioners and to their serious prejudice, incompetent statements were injected into the record which was submitted to the Secretary of Commerce and Labor. The statements, to which objection was made, had relation to the evidence presented by Tang Tun to support his assertion that the collector had permitted him to enter in 1897. From Tang Tun's identification papers it appeared that he had arrived at Tacoma on April 10, 1897, on the steamer "Tacoma," and had been admitted April 20, 1897. In the customs records it was noted that he had been held at Vancouver, B. C., and rejected on May 25, 1897. In his additional evidence he presented affidavits of a special deputy and an inspector of customs under the collector at the time, in which it was stated by both that it was the

practise not to permit Chinese persons to leave the steamer in which they had arrived until after a decision had been made allowing them to enter the United States, and that if the decision was adverse they were returned to China on the same steamer; and that at no time did they recall any steamer remaining in port from April 10 to May 25. In transmitting the record to the Secretary of Commerce and Labor, the inspector reviewed the case; and, referring to the affidavits submitted for the applicants and the impeachment of the office records, he stated that he had "made a careful examination of the customs records showing the arrivals and clearings of vessels in the district of Puget Sound in April and May, 1897," that "the steamer 'Tacoma' was shown to have arrived at Tacoma on April 10, 1897, and to have cleared for the Orient on April 16," and that furthermore "the said records showed that no other vessel of the same company was in the harbor at the time of the 'Tacoma's' departure, nor until five days" thereafter. The inspector added that in his examination of the Port Townsend customs records "in order to verify or refute the statements" of the witnesses, he had learned that there were two plans, as a rule, for disposing of the cases of Chinese persons; that is, they were either held on the ship until admitted or rejected, or if their cases were not disposed of while the ships were in port they were landed at Victoria, B. C., on the outward trips of the vessels, and remained there until notified of the decision. If this were favorable they would be forwarded on local steamers and admitted, and if adverse, they would be informed accordingly and entries would be made to that effect in the record. He added that his information on this point being at first somewhat uncertain he had verified it by conversations with the members of a Chinese firm who for many years were agents for all oriental steamship lines touching at Seattle, by an investigation conducted at Tacoma, and finally by the testimony (which appeared in the record) of

the witnesses for the applicants, that is, the testimony taken by the inspector after their affidavits had been submitted. In addition, "he found further verification" in the fact that "the Chinese passenger manifests of the Port Townsend office showed that Chinese whose names appeared on arriving manifests of oriental steamers subsequently appear on manifests of local vessels arriving from Victoria and Vancouver," and that a careful examination "of all such local steamer manifests from April 10 to May 25, 1897, fail to reveal the name of Tang Tun on any of them." The inspector also directed the attention of the Secretary to a typewritten list (presented as an exhibit) of the Chinese who had arrived on the steamer "Tacoma" on April 10, 1897, which had been prepared according to the custom prevailing in the office of the collector at that time and had been found in the Port Townsend records. On this list was the name of Tang Tun, identified by reference to his father, with the word "rejected."

Neither the nature of these statements, nor the manner of their introduction, affords ground for invalidating the proceeding. On the examination of the applicants' witnesses—the former customs officials—reference was made in the questions of the examiner to the date of the departure of the steamer "Tacoma" and the inquiry was explicitly directed to the practice of holding Chinese persons at Victoria whose right to enter had not been determined. The point of the inquiry was clearly understood, and not only was there no denial of the practice of detention at Victoria, but the statements of the inspector as to its existence found confirmation in the testimony of the special deputy collector. The list of passengers arriving on the "Tacoma" on April 10, 1897 (being the exhibit to which the inspector referred in his report), was shown to this witness, and he identified the word "rejected" after the name Tang Tun on this list, as being in the collector's handwriting. Both the special deputy and the customs

inspector stated that the signature of the collector on the original identification papers below the endorsement "Rejected May 25/97" was genuine, as they had also testified that the signature was genuine upon the copy which Tang Tun had, purporting to show his admission.

And it will be observed that it is not shown that the statements of the inspector, of which complaint is made, were false or that there was any attempt to deceive the Secretary. The writ of *habeas corpus* was granted in September, 1906. For some reason which the record does not disclose the case was not brought on for hearing until January 20, 1908, when an order was made for the taking of testimony. Then, instead of adducing evidence to show that these statements of the inspector were false or misleading, it was stipulated (on February 26, 1908) that the matter should be heard upon the record, including the papers which were submitted to the Secretary, and that the writ should be dismissed if the court, upon this record, should find that there had been no abuse of discretion. Had there been ground for saying that the inspector had misled the Secretary by misrepresenting the records to which he referred, or by false assertions as to the matters of fact disclosed by his inquiries, it cannot be doubted that this would have been shown, as there was abundant time for full consideration and inquiry. In these circumstances, it cannot be said that the inspector in stating the result of his investigations, in commenting upon the practice which had obtained in dealing with Chinese applicants for admission, and in referring to the entries in the official records, was guilty of unfair or improper conduct.

Complaint is also made of the action of the inspector in forwarding to the Secretary the papers in the cases of other Chinese persons who arrived on the steamer "Tacoma" with Tang Tun on April 10, 1897, some of whom had identification papers similar to those of Tang Tun with the endorsement of the collector, purporting to show their ad-

mission, in conflict with the office records. The inspector called attention to the fact that in certain cases, after inquiry before the United States Commissioner, and despite the possession of such identification papers, deportation had been ordered, and also that it appeared that all the applicants described in the papers forwarded to the Secretary had been held in British Columbia pending decision. The contents of these papers are not printed in the transcript of record, but we must assume from the description that they were from the official files. Of these the Secretary might at all times take cognizance, and it would be extraordinary indeed to impute bad faith or improper conduct to the executive officers because they examined the records or acquainted themselves with former official action.

But it is said that the evidence for the applicants was of such an indisputable character that their rejection argues the denial of the fair hearing and consideration of their case to which they were entitled. This contention is not supported. It was proved that Tang Tun had lived at Seattle for several years before he left for China in 1905. The question, however, was whether he was born in the United States. Of the witnesses who professed to testify on this point—other than Tang Tun himself—all save one were shown by their examination to be unworthy of credit; and the knowledge of the one trustworthy witness—a police officer of Seattle—was plainly insufficient to make his testimony controlling. This witness relied upon his identification of the youth of about eighteen years of age, who arrived in 1897, as the same person whom he had last seen as a child some thirteen years before. There remained the testimony of Tang Tun himself, but this, with all the other evidence in the case, was for the consideration of the officers to whom Congress had confided the matter for final decision. The record fails to show that their authority was not fairly exercised, that is, consistently with

the fundamental principles of justice embraced within the conception of due process of law. And, this being so, the merits of the case were not open to judicial examination.

The decision of the appeal was not the less that of the Secretary of Commerce and Labor, because communicated by the telegram of Mr. Murray, the assistant secretary (*Hannibal Bridge Co.* v. *United States*, 221 U. S. 194, 206), later verified by letter from the department. The statement of the dismissal of the appeal described the decision against the applicants upon the merits in accordance with the department's usage. Nor does the fact that the case was held under consideration by the department less than two days affect the finality of its determination. Although the proceeding had been long pending the issue was a narrow one and permitted of speedy disposition; and the circumstance that it received immediate attention and the decision was promptly announced is not a basis for attack.

As the District Court took jurisdiction and then proceeded to determine the merits, sustaining Tang Tun's claim of citizenship, the respondent was entitled to carry the entire case to the Circuit Court of Appeals. *United States* v. *Jahn*, 155 U. S. 109; *Spreckels Sugar Refining Co.* v. *McClain*, 192 U. S. 397, 407; *United States* v. *Ju Toy*, 198 U. S. 253, 259. And the judgment of that court, reversing the decision of the District Court and directing the dismissal of the proceedings, was right.

Judgment affirmed.